

A Long Road to Justice: The Struggle for Maya Land Rights in Southern Belize

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Abstract

After a decades long struggle, the Maya people have just recently had their communal right to land officially recognized by the highest court in Belize. Although these land rights are guaranteed in political and legal terms, the promises of environmental and social justice remain unfulfilled as the Maya people continue to experience displacement, theft and oppression. This paper will undertake an exploration of the relationship between forest management, Indigenous governance and Maya land rights in Southern Belize. I have two main objectives in writing this paper. The first is to examine the economic, political and social forces behind forest management in Southern Belize and the second is to bring to light the barriers that the Maya people have faced as they attempt to enforce their land rights. It will be argued that the power dynamics in Belize favour those of the government and industry and therefore, forest management plans in Belize do not currently prioritize or incorporate local knowledge. As a result, Maya communities lack agency over their lands and livelihood. This paper pays homage to the dedicated Maya activists who demonstrate that, no matter how many challenges they are faced with, they will continue to resist oppression and marginalization while at the same time advocating for the resurgence and self-defined future of the Maya forests and the Maya people of Southern Belize.

Foreword

When I began the first year in the MES program, my Plan of Study (POS) initially focused on analyzing deforestation conflicts through a criminological perspective. I completed my undergraduate degree in Criminology and Environmental Studies and, although the connection between these fields of study may not be immediately apparent, I always wanted to further explore the relationship between the two. Green criminology appeared to be a useful framework to uncover effective ways to deter, slow and stop deforestation and illegal logging. After completing a summer fellowship with the Maya Leaders Alliance in Belize, I decided to include a case study about forest management in the Maya villages in my Major Research Paper (MRP). During my time in Belize, I saw how industrial activities such as logging were threatening the Maya people's livelihood, land rights and culture. I decided to study the role of local communities in resource management and updated my research proposal to incorporate an exploration of the deforestation conflicts in Belize.

Following my II-III MES exam and upon conducting further research, I came to recognize the important relationship between Indigenous governance and forest management in Belize. Although the criminological theories comprised an important component of my theoretical framework and helped me to understand the driving factors behind deforestation in general, my area of concentration shifted towards Indigenous resource management. I concluded that a focus on this area of study would allow me to more fully understand the political, economic and social conditions that contribute to the unsustainable and inequitable forest management policies and practices in Belize.

My overarching learning objectives were to discover how to advance environmental justice in Indigenous communities, understand the role of local communities in resource management and learn about the transformative potential of the international human rights law. To fulfill these learning objectives, I began by conducting a literature review of the key concepts associated with Indigenous governance systems as well as the role of local Maya communities in resource management. My research was supplemented by my fellowship experience with the Maya Leaders Alliance. During my time in Belize, I gained valuable experience while assisting the organization on legal files pertaining to defending Maya customary land tenure. I also

spent a lot of time in the Maya communities, assisting the MLA with their educational initiatives and attending meetings with various stakeholders. This valuable experience was closely aligned with my area of concentration and directly coincided with my learning objectives. After my placement, I was able to interview one of the employees from the MLA to further complement my understanding of the themes discussed throughout my MRP. Ultimately, the practical experience of working with an Indigenous community on issues related to resource management together with my coursework provided me with a holistic understanding of my area of concentration and allowed me to realize my learning objectives.

Table of Contents

1 – Introduction.....	1
1.1 - Paper Outline.....	2
2 – Research Ethics & Methodology	3
2.1 – Engaging with Indigenous Knowledge in my Fellowship and Research.....	4
2.1.1 – The Influence of Colonialism on Education in Maya Communities	6
2.1.2 - The Current State of Education in Belize	7
2.1.3 - The Impacts of Modern Education on Maya Culture	8
2.2 - Methodology	10
3 – Legal and Policy Framework	12
3.1 - A Theoretical Analysis of Deforestation Conflicts	12
3.1.1 - Resource Management in Belize	13
3.1.2 - Indigenous Participation in Forest Management Plans	14
3.2 - The Theoretical Perspective of Green Criminology.....	17
3.2.1 - The Influence of Capitalism in Belize	18
3.2.2 - Deterring and Preventing Deforestation.....	19
4 – The Maya Land Rights Movement	20
4.1 - History of the Land Rights Struggle.....	20
4.2 - The Beginnings of the Land Rights Movement: The Legacy of Activist Julian Cho.....	22
4.3 - Securing Communal Land Rights	24
5 – The Role of the Indigenous Governance System in Relation to Land Rights	29
5.1- Subordinating the Alcaldes:.....	30
5.1.1 - The Rupert Myles incident	30
5.1.2 - The Crique Jute Incident.....	32
6 – Maya Resource Management	34
6.1 - Forest Management and Indigenous Governance.....	38
6.2 - The Contribution of Maya Communities in Managing the Commons	40
7 – The Enforceability of International and Domestic Law	42
7.1 - United Declaration for the Rights of Indigenous Peoples (UNDRIP).....	44
7.2 - Enforceability of Domestic Judgments.....	47
7.3 - Diversity of Viewpoints in Maya Communities.....	49
7.4 - Multidimensional Advocacy.....	50
8 – Conclusion	53
Appendix A: Sample Questions for Interview	56
Appendix B: Sample Informed Consent Form.....	57
Bibliography.....	60

1 – Introduction

The idea for my Major Research Paper (MRP) came to me after completing a legal fellowship with the Maya Leaders Alliance (MLA) in the town of Punta Gorda, Belize, where I spent three months living and working alongside the Maya people. The MLA is an NGO that provides litigation and advocacy support to the 39 Maya villages throughout the Toledo district, the southern most area of Belize.¹ The mission of the MLA is to protect the Maya people's natural resources, promote their cultural, social and economic development and enhance the rights of the Indigenous Maya of southern Belize. Currently, the organization focuses mainly on monitoring land use development. There are only a few staff members at the MLA including a spokesperson, a coordinator, a bookkeeper and a lawyer. Everyone employed by the MLA is a Maya community member with strong ties to their communities. The MLA's clients are the 25,000 Maya people who live in Toledo, the majority of whom are farmers by trade. Toledo is the least developed area in Belize and around 37% of the population lives below the poverty line. The Maya people make up the majority of those living in poverty. Although the Maya people are "cash poor," they do not view themselves as impoverished. They are rich in many other ways as they have a strong sense of community, a vast wealth of traditional knowledge and the land provides them with the resources that they need to make a living and provide for their families.²

Throughout my fellowship, my tasks were wide-ranging and included: writing legal memos, preparing clients for trial, attending village meetings on behalf of the organization and lobbying the Belizean government to fulfill their obligations under UNDRIP. I travelled throughout the southern region of Belize, visiting most of the remote Maya villages. While researching the MLA's activities prior my departure to Belize, I became aware of the issues related to land rights that the Maya people were

¹ The Julian Cho Society, "Mission Statement" (2008) online: <<http://www.jcsbelize.org/pages/aboutJCS.php>>.

² Penados, Filiberto & Chatarpal, Mark. "The Maya Land Rights Struggle: A Framework for Operationalizing 'Development with Identity'" (14 December 2015), *Starbroek News*, online: <www.starbroeknews.com/2015/features/in-the-diaspora/12/14/maya-land-rights-struggle-framework-operationalizing-development-identity/>.

experiencing. However, I was not aware of the extent of the socioeconomic issues that the Maya people faced until I arrived.

Although much has been written about the Indigenous Maya communities in Southern Belize, as Joel Wainwright, geographer at University of Ohio State states, little has been written about the “colonial political economy that transformed their livelihood.”³ In the hopes of filling this gap in the literature, this paper will undertake an exploration of the relationship between forest management, Indigenous governance and Maya land rights. My MRP is therefore meant to act as a contribution to the expression of the Indigenous forest management in Belize. I have two main objectives in writing this paper, the first is to examine the economic, cultural, political and social forces behind forest management in Southern Belize and the second is to bring to light the barriers to enforcing the recent land rights judgment. Although the Maya people’s communal rights to land have been affirmed, they continue to experience displacement, theft and oppression as they attempt to assert their land rights.

1.1 - Paper Outline

Following the introduction, in section 2 of my paper, I will position myself as a non-Indigenous researcher, working and writing about an Indigenous Maya community. In section 3, I will outline my theoretical framework for the paper through exploring the topics of resource management and green criminology. In this section, I will discuss how industrial activities, such as logging and agriculture, have denied the Maya people their livelihood, land rights and culture. I will analyze various responses to the deforestation that is taking place in Southern Belize and explore the barriers that remain when it comes to effectively enforcing forest management plans. This analysis will uncover the economic, social and political conditions that reinforce environmental harms in Maya communities. Section 4 will include a description of the history of the Maya land rights movement, while focusing on the important work of local Maya activists. Section 5 will outline the struggles that the Maya people continue to face in relation to Indigenous governance and inclusive resource management. In the latter sections of the paper, I will

³ Wainwright, Joel. “The Colonial Roots of Forest Extraction: Rosewood Exploitation in Southern Belize” *Development and Change* 49.1 (2017) 40.

highlight the importance and the future implications of the land rights judgment. This will include a summary of the remaining barriers to achieving social and environmental justice for the Maya people. Section 6 will argue that the government's resistance to respect Maya land rights, as well as the pressure that industry places on Maya communities, has resulted in a power imbalance that has contributed to the unsustainable forestry practices in Belize. Section 7 will explore the transformative potential of the law to impact social change. I will discuss the effectiveness of domestic and international human rights laws as well as the barriers to enforcement of these laws. More specifically, I will analyze the important role the United Declaration on the Rights of Indigenous Peoples (UNDRIP) has played in safeguarding the rights of the Maya people and their traditional way of life. In Part 8, I will speak to the effectiveness of the MLA's multi-dimensional tactics and the increasing importance of employing diverse strategies to address the varied needs of Maya community members.

2 – Research Ethics & Methodology

Colonialism can be defined as “a system of external domination” where “all aspects of society – economic, social, cultural – are controlled by another country.”⁴ Unlike colonialism, it can be argued that the human rights movement had noble intentions. However, similar to academia, the traditional narrative of human rights has overplayed the importance of the West and failed to acknowledge the significant role that locally based advocates play in achieving change. Makau Mutua, a Kenyan-American law Professor and human rights activist, critiques the classic human rights narrative as it reinforces Eurocentric norms. Human rights advocates from the developed countries are placed in the role of the saviour while those from developing countries were viewed as helpless victims or savages.⁵ Those from the West are seen as having the ability to assist those who could not help themselves, disempowering those who they seek to save. At the same time, this narrative ignores the role of third world activists in achieving change. Mutua argues,

⁴ Lewis, Karla. “Colonial Education: A History of Education in Belize” Meeting of the American Educational Research Association. New Orleans, LA, April 24-28, 2000, 3.

⁵ Mutua, Makau, “Savages, Victims, and Saviors: The Metaphor of Human Rights” *Harvard International Law Journal* 42.2, (2009).

The pioneering work of many non-Western activists and other human rights heroes are not acknowledged by the contemporary human rights movement. These historically important struggles... have either been overlooked or rejected in the construction of the current understanding of human rights.⁶

While there is a mistaken belief from those in the West that human rights problems only occur “out there” in countries outside of their own, I was well aware of the human rights atrocities in my own country as well as the treatment and living condition of Canada’s Indigenous people. Accordingly, I never saw myself as saviour or as an authority that was able to transform realities to fit the law⁷ but instead as someone who could use the skills I had learned in school to help support the efforts of the MLA. Further I did not travel to Belize to help or “save” the Maya community, but instead I went there as someone who could support the Maya community in reaching their goals. There were even a few occasions where the MLA would use the fact that I was a Westerner to assist them in their advocacy activities. The MLA were very transparent with me about how they had learned that having international observers in the courtroom worked to increase their legitimacy. They would have the students sit in the front row at court hearings as they found that the judges would be less likely to treat the representatives from the MLA unfairly during court proceedings when foreigners were present.

2.1 - Engaging with Indigenous Knowledge in my Fellowship and Research

Historically, academic research typically advanced colonial Western worldviews while Indigenous theories, which challenge the Western framework, were ignored. However, academia is slowly shifting away from Eurocentrism, towards recognizing and incorporating Indigenous knowledge and the concerns of Indigenous communities. Despite this, tensions remain between the current educational model and Indigenous knowledge and the impacts of colonialism remain prevalent in educational systems as

⁶ *Ibid* at 177.

⁷ Imai, Shin. “A Counter-pedagogy for Social Justice: Core Skills” *Clinical Law Review* 9.1 (2002) 197.

Eurocentrism takes precedence over other ways of knowing.⁸ When I began my research project, I knew that I needed to exercise vigilance and examine the ways in which my beliefs have the potential to impact my research.⁹ In her work *Unsettling the Settler Within*, Paulette Regan, Professor of Indigenous governance at the University of Victoria, urges non-Indigenous Canadians to decolonize themselves by exploring their identity and acknowledging Canada's repressed history. She cautions that outsiders of Indigenous culture run the risk of "perpetuating an imperial belief that their status as a researcher entitles them to acquire knowledge."¹⁰ I was initially doubtful about how useful my efforts would be to the MLA, especially because I would be returning to Canada a short while later. As David Kennedy, Professor of law at Harvard Law School and director of the Institute for Global Law and Policy, said in his article *Spring Break*, "as human rights activists, we can touch the barbaric and return unscathed."¹¹ However, I was pleased to learn that I would be able to continue to assist the MLA while I was back in Canada. Some of the past interns had continued to work with the MLA years after their placements ended and would use their vacation time to travel to Toledo to assist with the larger litigation files. I knew then that I could become part of the MLA's international legal team and continue to work with the MLA long after my fellowship had ended. As a result of my education as a law student in North America, I was granted a degree of access in my research that was not widely available to Belizeans. This section of my paper will analyze my role as a white, Canadian law student, working in an Indigenous Maya community and as a Master's student researching Indigenous justice issues. This analysis will allow me to engage with the topics in my paper in a respectful manner and will also explain the reasoning behind the methodology that I have chosen for my MRP. Some of the themes that I plan to address in this section include: acknowledging tensions and privilege, avoiding assumptions and recognizing diversity within Indigenous populations.

⁸ Ermine, Willie et al, *The Ethics of Research Involving Indigenous Peoples*, Saskatoon: Indigenous Peoples Health Research Centre, 2004, 5.

⁹ Stelmach, Bonnie. "Research or In-Search? A non-Aboriginal researcher's retrospective of a study on Aboriginal parent involvement," *First Nations Perspectives* 2.1, (2009) 36.

¹⁰ Regan, Paulette. *Unsettling the Settler Within: Indian Residential Schools, Truth Telling, and Reconciliation in Canada*. Vancouver: UBC Press, 2014, 18.

¹¹ Kennedy, David. "Spring Break." *Texas Law Review* 63.8 (1985) 1414.

2.1.1 – The Influence of Colonialism on Education in Maya Communities

Colonialism has resulted in the domination, coercion, dependence and exploitation of Indigenous people in Belize. The impacts of colonialism can be demonstrated by looking at the history of the education system in Belize. During the settlement era, the educational system in Belize began to reflect the colonizer's agenda as it was based on the British educational model (which was later influenced further by the Catholic missionaries from the United States). Belizean history was not taught in schools as both of the educational materials and the teachers were from England and the United States.¹² Instead, people learned about Maya history and culture through the elders in the village. There was low attendance of Maya children at schools throughout the early 1900's as there were issues with accessibility. If a child did not live in a town or larger village on the coast or a river they were unable to attend school. There was also a lack of bilingual teachers to teach the Maya children in their native languages.¹³

British officials often questioned the legitimacy of Maya knowledge systems. In 1918, the district commissioner was quoted as saying,

“I would like to see an improvement to this fast decaying race, especially the youngsters, bright and quick to learn and although these kiddies when in school appear to me studious and seem to enjoy it, they much prefer to shoulder a machete and strut off with father to the *milpa*.”¹⁴

In Maya communities there is seasonal demand for agricultural labour and many students choose to work on the family's farm rather than attend school. From a young age, the boys in Maya communities take part in a weekly cleaning of the land and learn about traditional farming techniques. The colonizers thought that taking children out of school during the busy agricultural months detracted from their education since attendance was considered to be an important factor in a student's success. The Maya population is diverse and while some prioritize receiving an education based around schooling, others do not consider traditional modes of education a priority.

¹² *Supra* note 4 at 17.

¹³ *Supra* note 4 at 16.

¹⁴ Wainwright, Joel. *Decolonizing Development: Colonial Power and the Maya*. Malden: Blackwell, 2010, 42.

2.1.2 - The Current State of Education in Belize

In Belize, school is mandatory for all those under 14 and is paid for by the government. Before the children enter high school, they write a standardized test, which determines the schools that they will be permitted to attend. The results of the test also determine the scholarships that they will be eligible to receive. The cost of books and tuition for high school are too expensive for many Belizean families to afford and due to the inadequate government support, some chose to drop out of school after completing their primary education. In fact a sizeable minority, 13% of 15-24 year olds, do not finish elementary school in Belize and only 50% of those that do finish elementary school go on to secondary school.¹⁵ As scholarships for universities are very limited, less than 15% of the population goes on to enroll in the educational program that prepares them for university or vocational training.¹⁶

One of the many socio-economic issues that the Maya people have faced is an inadequate education system, which has resulted in the Maya people having the highest illiteracy rate in the country. It is apparent that the income gap in Belize dictates who is able to access education as middle and upper class children receive better grades and pass the standardized tests at higher rates. Children from the wealthiest quintile are more than twice as likely to be enrolled in secondary schools as those in the poorest quintile.¹⁷ The Toledo district, where the majority of the Maya people live, is the considered the poorest region in Belize. In the Toledo district, there is a lack of school supplies in elementary schools and approximately half of the teachers do not have training beyond high school. These factors negatively impact the Toledo children's performance on the standardized tests. Drop out rates are the highest in Toledo and only one in two Toledo children finish primary school.¹⁸ Attendance of Maya children is lower than children from other ethnic groups, as only 40% of Maya children attend secondary school compared with 57%

¹⁵ *Supra* note 4 at 21.

¹⁶ "Principles and General Objectives of Education." *International Bureau of Education, World Data on Education 6th Edition*, 2007.

¹⁷ Näsund-Hadley, Emma et al. *Challenges and Opportunities in the Belize Education Sector*. Inter-American Development Bank, 24.

¹⁸ *Ibid* at 20.

Creole children. The attendance of Garifuna and Creole students at the university level is more than double that rate of Maya students, which is reported at 8%.¹⁹ To address this apparent inequality, the Julian Cho Society partnered with the Maya Educational Foundation to administer a Maya student scholarship program. The Maya Educational Foundation supports educational programs throughout the Toledo and currently facilitates the studies of 32 Maya high school students.²⁰

Indigenous scholar Glen Coulthard argues that colonialism has ensured its hegemony over time due not only to historical conditions but also human attitudes to these conditions.²¹ Although, Belize gained its independence from the British in 1981, the colonial influence on education continues to be felt today through exclusionary and discriminatory laws, policies and programs and the justified skepticism towards a colonially designed school system remains.²² The Maya people are the descendants of the pre-colonial inhabitants of Belize and as Indigenous peoples, their identity, values and history distinguish them from other sections of the national community. For decolonization to occur, Maya communities need to be given the autonomy to develop their own philosophy of education, which will better prepare their youth to contribute to Belize's social and economic development and equalize the playing field for those who intend to pursue higher education.

2.1.3 - The Impacts of Modern Education on Maya Culture

When I originally learned about the Julian Cho scholarships, I was pleased to discover that more Maya people were receiving an education. However, when I had an opportunity to speak with the Maya elders in Belize, they expressed concerns about how the newfound emphasis placed on education was impacting their communities. They spoke about how more and more young Maya people are not following the traditional way of life. The elders commented that when they were growing up, they did not know

¹⁹ Gregory, George Ann. Legacies of Colonialism: The Education of Maya in Belize. In: Honoring Our Teachers. Flagstaff: Northern Arizona University, 2017, 124.

²⁰ "Maya Education Foundation, Maya Scholarship Program." The Julian Cho Society, www.jcsbelize.org/pages/MEF.php.

²¹ Coulthard, Glen. "Subjects of Empire? Indigenous Peoples and the "Politics of Recognition" in Canada." Contemporary Political Theory 6.4 (2007).

²² *Supra* note 4 at 5.

that planes or cars even existed. Money was never a concern because their wealth came from the land and it provided them with everything that they needed. The young people learned about all of these things and, as a result, they had different priorities. Now, more young Maya are choosing to leave their communities to attend school or search for work in the city instead of becoming traditional farmers. Consequently, the livelihood and future of Maya communities are uncertain.

This cultural conquest, where global culture and economy encroach upon once remote environments, has impacted Maya people socially, politically, economically and culturally.²³ Over the years, many social and political changes have been observed throughout Belize. During the 1970's, Maya communities underwent a cultural shift as many converted to Catholicism. Belize was a convenient destination for missionaries because most Belizeans speak English. The missionaries would bribe Maya communities with material goods and tools that would assist with farming. During this time, the Maya became disconnected from their cultural and spiritual identity.²⁴ As communities became split along religious lines, cultural solidarity was weakened and traditions began disappearing. Fewer youth are showing interest in learning Maya languages. As more young people are leaving their communities and spend more time away from the villages, they see a dependence on an Indigenous language as a hindrance to their attempts to integrate into Belizean society.²⁵ These cultural changes can create tensions in communities and have the potential to weaken the land rights movement and Indigenous governance systems which in turn could lead to unsustainable and inequitable forest management practices.

After speaking to elders, I understood their concerns about the impact of the cultural changes on their communities and the land rights struggle. Land sustains the Maya people's lives in every aspect: spiritually, physically, socially, culturally and economically. If children grow up feeling disconnected from Maya land, culture and heritage, they may not feel the same desire to work to safeguard these things. Despite my

²³ Steinberg, Michael. "Biological Diversity and Cultural Survival: Mopan Maya Traditional Culture and Environmental Change in Southern Belize" *LSU Historical Dissertations and Theses* (1999) 7.

²⁴ "Notes from the Field: Death of the Dance; Cultural Change and Religious Conversion Among the Maya in Southern Belize." *Cultural Survival*, www.culturalsurvival.org/publications/cultural-survival-quarterly/notes-field-death-dance-cultural-change-and-religious.

²⁵ *Ibid.*

exposure to environment education²⁶ I realized that I did not view these ecological and experiential ways of learning as a kind of education. The reason why I could not reconcile mainstream education with education on the land was that I was still equating the Western schooling system with education, which can be described as a kind of cognitive imperialism.²⁷ The idea that some lessons can only be learned by spending time interacting with the land stands in contrast to the formality of the Western education system. I was conditioned to believe that education occurred mainly in the classroom²⁸ and I did not truly appreciate the legitimacy of other ways of knowing and learning until I arrived in Belize. There is not a “better” system, instead both should be seen as having value.

2.2 - Methodology

My research is focused on exploring how the affirmation of Maya land rights has impacted resource management throughout Maya communities. In order to understand the relationship between land rights judgment and forest management, I knew I would need to understand the political, economic, and cultural context in which Maya communities exist. I began my research by consulting primary sources such as key policy documents issued by the Belizean government as well as case law pertaining to Maya land rights. After completing my secondary research, I was able to incorporate theories from green criminology, political ecology and environmental justice into my paper. I found that no theoretical perspective alone could answer my research question, but all provided concepts that were insightful and useful which ultimately resulted in a more complete understanding of the vital importance of local participation in resource management. For example, some political ecology studies focused on the impact of political and economic forces on local people but did not discuss the ecological analysis

²⁶ During my undergraduate degree, I completed a work-study term with professor Hillary Inwood at the Ontario Institute for Studies in Education. I learned about teaching methods for environmental education and environmental literacy. The creative work being undertaken by those at OISE taught me that learning outside the classroom enriches the educational experience of students and has positive implications for development.

²⁷ *Supra* note 7 at 38.

²⁸ Kirkness, V.J. “Our peoples’ education: Cut the shackles; cut the crap; cut the mustard.” *Canadian Journal of Native Education*, 22.1 (1998).

or environmental impacts in depth. I learned that the environmental justice theories worked to fill this gap and the criminology theories helped to explain the driving factors behind unsustainable forest management.

I decided to navigate between multiple research methods throughout my paper by supplementing academic research with a critical personal narrative as well as an interview with a local Maya activist. I was fortunate to develop meaningful relationships with the members of the MLA as well as members of the wider Maya community throughout my time in Belize. As a result of these relationships, I was able to benefit from the knowledge and experience of Indigenous people at the local, regional, national, and international level. This provided me with insights and understandings that would not be readily available to those who are removed physically and culturally from the participants in their research. As I have direct experience working with Maya communities, I have incorporated a reflective element in my paper. I will be using my personal experiences to attempt to further describe and analyze a certain cultural or social experience. This element of the paper will allow me to provide meaningful commentary, while positioning these reflections within a broader theoretical framework. The reflections are found near the beginning of certain sections throughout the paper. To distinguish the reflections from the body of the paper, the writing has been italicized. I also acknowledge my identity as an outsider when engaging in this research. I will not be able to fully comprehend Maya worldviews, culture or realities as my understanding is filtered through a Western lens.²⁹ As I am aware that my cultural perspectives limit my ability to understand the Maya perspective, I realize that I could not possibly know the answers to questions that I am researching without guidance.³⁰ Therefore, it is equally as important to include the Maya voice in my paper. I conducted an interview with the spokesperson of the MLA, Pablo Mis, and he is quoted at length throughout my paper. The interview with this activist will allow me to gain insight into the role that the Maya people of Belize have played in safeguarding Maya forests and land rights as well as the role that they will continue to play in forest management. Through discussing my critical personal narrative alongside local news, academic literature and the Indigenous

²⁹ *Supra* note 7 at 26.

³⁰ *Supra* note 7 at 51.

perspective, a new story will emerge, allowing me to ultimately discover new perspectives.

3 – Legal and Policy Framework

3.1 - A Theoretical Analysis of Deforestation Conflicts

Deforestation disrupts ecosystems but also threatens biodiversity and ecological integrity. As forests determine the quality and quantity of global water supplies, absorb carbon dioxide and house vital biodiversity hotspots, deforestation is detrimental to the overall health of an ecosystem.³¹ The most apparent impact of deforestation is a loss of habitat and habitat fragmentation, which has a profound effect on plants and animals that live in the forest, many of which are among the world's most threatened and endangered species.

The illegal market for natural resources has contributed to the extensive damage of ecological systems. Conservation groups estimate that illegal deforestation makes up as much as 50-90% of current lumber production worldwide.³² Current forest management regimes have proven ineffective and mass deforestation and illegal logging are still commonplace. Many forest management programs have not been successful due to ineffective enforcement. Furthermore, some of these programs have failed to consider Indigenous people's cultural practices and beliefs, which has led to a host of social and environmental justice problems.³³ The participation of local populations is vital in creating equitable and effective management programs. When inclusive programs are widely implemented, sustainable forest ecosystems are more likely to be observed. Conversely, when local communities are not properly consulted, it gives way to displacement placed conservation, where people's basic human rights are disrespected as they are forcefully displaced from their lands to make way for conservation programs, protected areas and parks. Indigenous people who are permitted to stay on their land are

³¹ Skole, David. "Tropical deforestation and habitat fragmentation in the amazon. Satellite data from 1988." *Science* 260.5116,1993.

³² Nellemann, C., INTERPOL Environmental Crime Programme (eds). 2012. *Green Carbon, Black Trade: Illegal Logging, Tax Fraud and Laundering in the Worlds Tropical Forests*. A Rapid Response Assessment. United Nations Environment Programme, GRIDArendal, 6.

³³ White, Robert. *Global Environmental Harm: Criminological Perspectives*. Portland: Willian, 2011, 217.

often subject to very strict controls and regulations on their agricultural practices.³⁴ These programs can become so intrusive that they have threatened the local's livelihood, as they can no longer farm on the lands or use traditional agricultural practices.

3.1.1 - Resource Management in Belize

In an attempt to make for a more inclusive process in forest management processes that includes the voice of local people in Belize, the government began to rely on “community-based management” or “co-management” solutions. However, it gave way to inequitable power relationships as the elite and powerful economic groups controlled the negotiations and suggestions from environment and community groups were often ignored or repressed. Political scientists, Hoberg and Phillips describe this process “not as consultation for regulation, but consultation instead of regulation; what might be dubbed a strategy of “talk and dig.”³⁵ When I asked Maya activist, Pablo Mis, about his views of co-management, he responded that:

“Co-management of resources in Belize has proven to be a failed strategy. This is not confined to Belize. Globally, if you look at the performance of protected areas and co-management in Indigenous communities and in local communities studies have shown that it is a failed approach. It is because of that failure that the MLA is pushing for the Indigenous and Conserved Community Areas (ICCAs) in Belize. ICCAs are trying to capture what Indigenous people have been doing all along to manage their lands sustainably. We will see more and more of that approach taking effect here in the Maya communities.”³⁶

ICCAs respect the close relationship between the Maya people and the Maya forest. Essentially ICCAs are territories and areas that are conserved by Indigenous Peoples and local communities. ICCAs respect customary laws, community protocols and the right of self-governance.³⁷ They ensure that the Indigenous perspective is present in all discussions pertaining to biodiversity protection.

³⁴ Solinge, Tim & Boekhout Van. “Eco-Crime: The Tropical Timber Trade.” *Organized Crime: Culture, Markets and Policies Studies in Organized Crime*, (2008).

³⁵ Hoberg, George & Phillips, Jeffrey. “Playing Defence: Early Responses to Conflict Expansion in the Oil Sands Policy Subsystem.” *Canadian Journal of Political Science*, 44.3, 2010, 22.

³⁶ Mis, Pablo. Personal Interview. 19 Dec 2018.

³⁷ Bavikatte, Kabir. “Environmental Law as Political Ecology: The Roots of Biocultural Rights” Sustaining Commons: Sustaining Our Future, the Thirteenth Biennial Conference of the International Association for the Study of the Commons, 2011.

The activist also explained to me that community-based management was not feasible in Belize for several reasons. To begin with, Indigenous people are more likely to manage natural resources sustainably while the Belizean government is more likely to give resources away for development under the context of environmental protection. The activist referred me to the example of Sarstoon-Temash National Park. The park was on Maya customary lands and the government of Belize designated the park as a “protected area” without consulting the Maya people. The communities did not initially object to the park being classified as a protected area. The way that the government described the park, it was no different than how the Maya communities were currently managing the area and therefore, it would not affect their use or enjoyment of the land. However, the government began to permit seismic testing in the park for the purpose of oil exploration without consulting the Maya communities. The activist told me that it was at this point,

“It became clear to the Maya people that where the government is managing resources, they have the right to make decisions at any time on their own, regardless of the concerns of the Maya people.”³⁸

When the Maya community filed a complaint in relation to the oil exploration, the Supreme Court of Belize responded by saying that the actions should not have been authorized because a proper environmental assessment had not been carried out. They did not address the impact that the oil exploration would have on the Maya people’s community.³⁹ These management plans give way to another brand of colonialism and are illusions of legitimacy, as the ideas and concerns of the Maya people are not incorporated into management plans.⁴⁰

3.1.2 - Indigenous Participation in Forest Management Plans

Indigenous involvement in resource management has become increasingly important as it allows communities to manage and benefit from natural resources on their land. Law and policy have recognized the increasing need for Indigenous participation in

³⁸ Mis, Pablo. Personal Interview. 19 Dec 2018.

³⁹ Deluca, Danielle. “Maya Win Unprecedented Land Rights in Belize at International Courts” (June 2015), Cultural Survival online: <<https://www.culturalsurvival.org/publications/cultural-survival-quarterly/maya-win-unprecedented-land-rights-belize-international>>.

⁴⁰ Irlbacher-Fox, Stephanie. “Traditional Knowledge, Co-Existence and Co-Resistance.” *Decolonization: Indigeneity, Education & Society* 3.3, (2014) 150.

land use planning. For example, the Rio Declaration on Environment and Development (1992)⁴¹ affirmed:

Indigenous people ... have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.⁴²

The consultation of local people during the creation and implementation of forest management programs is crucial as they hold different important perspectives on conservation problems. Knowledge from the community level can help build a more complete information base and give way to ulterior methods of sustainable forest management.⁴³ Indigenous knowledge is gained through the long-term use and dependence on local resources, which gives way to an intimate understanding of the surrounding ecosystem.

The Maya people possess traditional knowledge, which offers invaluable insight into biodiversity in Belize. Maya people have an invaluable understanding of the natural environment as they have been maintaining the land sustainably for centuries, long before it was fashionable in the environmental community. Studies have demonstrated that communities that have historically conserved ecosystems and have the potential to be the most adversely affected by adverse environmental impacts are the best suited to make decisions about how to manage the commons. In Belize, it has been hypothesized that the stability of forest cover is due to the persistence of customary Maya land use and tenure.⁴⁴ The Maya people's dependence on the land and natural resources are essential and inseparable to their physical and cultural survival as they derive their resources for food, shelter, medicine from the forests in which they live. The communities interact with the forest on a daily basis and these close ties to the forest make them the most knowledgeable land managers. They do not view the land as a commodity, but rather

⁴¹ The declaration consists of 27 guiding principles for sustainable development. It was adopted in over 170 countries.

⁴² Convention of Biological Diversity, Rio Declaration on Environment and Development, online: <<https://www.cbd.int/doc/ref/rio-declaration.shtml>>.

⁴³ Berkes, Fikret, et al. "Rediscovery of Traditional Ecological Knowledge as Adaptive Management." *Ecological Applications*, 10.5 (2000) 1251.

⁴⁴ Wainwright, Joel. "The Political Ecology of a Highway" *Environment and Planning* 47 (2015) 836.

seek to live on the land in a dignified manner. As the Maya activist told me, the Maya people have always believed that,

“The forest and natural environment is a source of life. The Maya philosophy is that human beings are not at the center of life, they are the children of Mother Earth. Indigenous people are stewards for their resources because there is an appreciation that without the resources then they won’t be able to have a viable community, a viable society. To us, sustainable development meets the needs of local people for if it does not, people will be obliged by necessity to take from the environment more than planned.”⁴⁵

The Maya people’s customary land is where their history, identity, spiritual beliefs and ultimately their survival are rooted.⁴⁶ They view themselves as members of the environmental community, “as part of a personified, spiritually imbued environmental family.”⁴⁷ For this reason, the Maya people do not believe the land should be sold for monetary gain. However, the land can be leased for actions that are pre-approved by the Maya including tourism or meaningful development. As Maya activist Cristina Coc has said,

The value that’s placed on [natural] resources by state and companies is a dollar value. For us, that’s not the same. Mother Nature is more than a dollar value. She’s a part of who we are.⁴⁸

The Maya people’s relationship to the land stands in contrast to the Belizean government’s concept of land ownership. Therefore, it is of the utmost importance that Maya communities are given the right to manage their own resources, the right to self-determination and the right represent themselves through their own institutions. As such, the Maya people have created the Maya Economies Initiative to “support sustainable economic development within Maya territories through good governance, to achieve self-defined empowerment, to encourage equitable partnerships with the private and public

⁴⁵ Mis, Pablo. Personal Interview. 19 Dec 2018.

⁴⁶ Martínez-Reyes, José Eduardo. *Moral Ecology of a Forest: the Nature Industry and Maya Post-Conservation*. Tuscon: The University of Arizona Press, 2016, 4.

⁴⁷ Berkes, Fikret. “Rethinking Community- Based Conservation.” *Conservation Biology*, 18.2, 10 May 2004, 165.

⁴⁸ “Land Guardians: Securing Indigenous Land Rights in Belize as a Strategy to Combat Climate Change.” *UNDP Equator Initiative on Exposure*.

sector, and to protect traditional wisdom and culture for future generations.”⁴⁹ It is programs such as the Maya Economies Initiative that work to promote social and environmental justice through respecting the rights of the locals and encouraging them to participate in development and policy making processes. This way, Maya communities are the leaders in the decision-making process and they are given the opportunity to continue with traditional practices.

3.2 - The Theoretical Perspective of Green Criminology

Those responsible for environmental degradation are rarely held responsible as their actions are regulated through legal mechanisms that exist outside of criminal law. Power interests ensure that not all forms of environmental harm are considered for punishment under the law or addressed by the state. Green criminology is a newer branch of the discipline that analyzes green crimes, which are harms from an ecological vantage point. Green criminology is a useful theoretical framework to assist in the analysis of the environmental harms taking place in Belize as it can further illuminate the harms that accompany deforestation as well as the need to promote equitable forest management. Lynch and Stretesky note that the purpose of green criminology is to:

“Provide a space within criminology to examine the nexus between environmental problems, the definition of harms against nature as crimes, the need to reconsider criminal justice practice and policy in relationship to the environmental harms they produce, the variety of victims environmental offenses create (for human and non-human species, as well as ecological segments such as wetlands, forests, air, and land, etc.), and the effect of environmental toxins on ecological systems and species’ health and behavior.”⁵⁰

Green crimes can be defined as “acts that cause or have the potential to cause significant harm to ecological systems for the purposes of increasing or supporting production.”⁵¹

⁴⁹ “Creating Maya Economic Empowerment - Global Indigenous Development.” *Indigenous Trust*, globalindigenoustrust.org/current-projects/maya-economies/.

⁵⁰ Lynch, Michael J., et al. *Green Criminology: Crime, Justice, and the Environment*. Oakland: University of California Press, 2017, 8.

⁵¹ *Ibid* at 2.

This includes behaviours that may not be recognized by the law or in conventional legal terms.⁵²

The Western discourse for development once portrayed Indigenous societies as underdeveloped. For example, in the 1950's, the British believed that the Maya villages in Belize were primitive and they thought of themselves as able to "give civilization to the Indians"⁵³ through the massive clearing of the Maya forest to contribute to the timber trade and make way for cattle ranching. This dispossession of Maya people was legitimized and development on Maya lands was seen as an improvement as it brought them into the capitalist economic system.⁵⁴

3.2.1 - The Influence of Capitalism in Belize

Much of green criminology has focused on the impact of capitalism on cultures and environments in developing countries. Green criminology theorists rely on structural forces such as the treadmill of production (ToP) theory to develop political and economic explanations of green crime.⁵⁵ Capitalism seeks to expand production at any cost and is based on the exploitation of nature and human labour, which has resulted in exploitation and has created inequities in such a way that "wealth is stolen from the poor."⁵⁶ The ToP theory explains that in order to raise profits, the production process must constantly increase through the consumption of natural resources. This in turn leads to the escalation of ecological destruction. Belize is a product of a "capitalist political economy, inherited institutional structures, and class conflicts rooted in the exploitation of forest lands."⁵⁷ The Maya people have long resisted many development projects led by the state including logging concessions and the paving of new highways and the low-

⁵² Lynch, Michael J., et al. "Is It a Crime to Produce Ecological Disorganization? Why Green Criminology and Political Economy Matter in the Analysis of Global Ecological Harms." *Hazardous Waste and Pollution*, Mar. 2015, 999.

⁵³ *Supra* note 47 at 168.

⁵⁴ Penados, Filiberto & Chatarpal, Mark. "Food Security and Maya Land Rights: Crafting paths of 'Development with Identity'" (9 November 2015) *Starbroek News*, online: <https://www.starbroeknews.com/2015/features/11/09/food-security-and-maya-land-rights-crafting-paths-of-development-with-identity/>.

⁵⁵ Schlosberg, David. *Defining Environmental Justice: Theories, Movements and Nature*. New York: Oxford University Press, 2007.

⁵⁶ *Supra* note 50 at 1.

⁵⁷ *Supra* note 14 at 56.

value extraction of timber from Maya lands, all of which demonstrates that Belize remains deeply embedded with global capitalism.⁵⁸ Outdated government policies contribute to deforestation. For example, residents in Belize are given tax reductions for clearing forests on their lands to make way for agricultural activities.⁵⁹ This policy leads landowners to clear their lands, which then lay idle as the owners do not have the financial means to engage in alternative land use. Amendments to this policy could contribute to a reduction of the deforestation rate and the fragmentation of Belize's forests.⁶⁰ Deforestation conflicts will be difficult to solve in a capitalist system that prioritizes economic growth above ecological integrity. The resource management framework in Belize prioritizes profits at the expense of equality and environmental protection and has failed to align with global efforts to reduce deforestation and forest degradation. Achieving environmental sustainability would therefore require the restructuring of the political economy to incorporate the voice of the Indigenous populations. The forest should be viewed as the home of the Maya people rather than an economic resource, where profitability is the highest priority.

3.2.2 - Deterring and Preventing Deforestation

Deterrence theory is another theory of green criminology, which argues that behavior is guided by rationality and therefore environmental crimes will decrease when there is a belief that the perpetrators will be apprehended. When environmental crimes continue to be profitable and there is a lack of certain or swift punishment, there is no deterrent in place to prevent or eliminate ecological destruction. As a result of ineffective legal and institutional frameworks to enforce environmental regulations pertaining to the forests in Belize, as much as 60% of lumber is harvested illegally. Furthermore, the country is experiencing deforestation at a rate that is twice that of Central America.⁶¹ In Belize, illegal logging continues to occur due to inadequate enforcement mechanisms,

⁵⁸ *Supra* note 14 at 57.

⁵⁹ *Supra* note 14 at 45.

⁶⁰ Young, Colin A. "Belize's Ecosystems: Threats and Challenges to Conservation in Belize." *Tropical Conservation Science*, 1.1 (2008) 19.

⁶¹ *Ibid* at 22.

such as a lack of financial resources and personnel.⁶² The Forestry Department only has 38 employees, including 21 rangers, which is insufficient to adequately enforce the environmental regulations. The capacity of the forestry department needs to be strengthened in order to carry out its' monitoring and enforcement responsibilities.⁶³ Deterrence in some places, such as the Belize-Guatemala border, is non-existent. This is compounded by the conflict between the two nations as Guatemala has a longstanding territorial claim over Belize and, consequently, there is a sentiment among Guatemalans' that they have a "right to everything in Belize."⁶⁴ The forest clearing near the boarder is therefore thought by the Belizeans to be a criminal act carried out by Guatemalans.⁶⁵ More recently there have been efforts by public officials and non-governmental organizations to reduce cross-border illegal logging.⁶⁶ It is clear that both governments will need to work together to reach a solution.

4 – The Maya Land Rights Movement

This section of the paper will explore the history of the Maya land rights struggle, while focusing on the important work of the Maya activists. The future implications of the land rights judgment for Maya communities will also be discussed.

4.1 - History of the Land Rights Struggle

While researching the Maya Leaders Alliance (MLA) before my departure to Belize, I came across a photo of a billboard that featured a picture of Cristina Coc, the co-spokesperson of the organization. Beside her picture was the following quote, "I am driven to connect land rights to human rights." The sentiment behind this statement was something that I had become familiar with throughout my undergraduate studies and law school classes. I had learned about the close spiritual, cultural and economic ties that Indigenous people have to the land. My classes also explored how industrial activities such as logging and oil extraction threaten an Indigenous community's livelihood, land rights and culture. However, I did not truly understand the significance of Cristina Coc's

⁶² *Supra* note 1 at 46.

⁶³ *Supra* note 60 at 28

⁶⁴ *Supra* note 60 at 20.

⁶⁵ *Supra* note 52 at 842.

⁶⁶ *Supra* note 60 at 20.

statement until I worked as a legal intern alongside the Maya Leaders Alliance and the Maya people of Southern Belize. The Maya people call the forests of Belize home. They have very close ties to the land as they depend on the use of their land for their physical and cultural survival. For the Maya people, maintaining possession and control over their traditional lands is a matter of fundamental human rights.

Although the Maya people inhabited Belize long before the arrival of the British, the settlers did not formerly recognize this. The British viewed the land as vacant and saw the Maya people as squatters. The first governor of British Honduras has been quoted as saying that there is no record of any Indigenous population living in Belize before British settlement and therefore no reason to believe that any such occupation existed.⁶⁷ During the 1770's the British began to harvest mahogany for luxury furniture, which the Maya people viewed as a threat to their traditional territory and independence. The British came to perceive Maya agriculture and farming as a threat to the forest reserves. The mistrust of their agricultural practices was due in part to the fact that they were not subject to government control or taxation systems.⁶⁸ The Maya population was displaced through violent means and they were forced to retreat into the interior forest to accommodate logging but later settled in villages in the surrounding area. These remote communities are where many of the modern Maya continue to reside today. The British saw the Maya as obedient and dependent. They became a source of cheap labour for foreign-owned plantations.⁶⁹ Some Maya people resisted assimilation and sought to re-establish autonomous Maya communities through armed raids also acquiring the competing image of wiry, hardy and courageous.⁷⁰ In 1872, under the Crown Land Ordinances, the British established reservations and the boundaries were determined without consultation of the Maya and prevented them from owning the land, which deprived them of their independence.⁷¹ Mahogany companies owned most of the land in Belize while the Maya lived on small reservations where they were only permitted to grow food for subsistence. In 1934 a western boundary was created, separating British

⁶⁷ Bolland, O. Nigel. *Colonialism and Resistance in Belize: Essays in Historical Sociology*. Benque: Cubola Productions, 2009, 91.

⁶⁸ Colchester, Marcus, and Larry Lohmann. *The Struggle for Land and the Fate of the Forests*. London: Zed Books, 1995, 80.

⁶⁹ *Ibid* at 110.

⁷⁰ *Ibid* at 112.

⁷¹ *Ibid* at 112.

Honduras from Guatemala and Mexico. The boundary between Belize and Guatemala is ill defined to this day because of territorial disputes.⁷² Belize can be considered a young country as it was granted independence from the United Kingdom in 1981.⁷³

It was not until the 1990's that issues related to resource extraction in Belize sparked the beginning of the Maya land rights movement. Belize is very rich in biodiversity and throughout history much of the landscape remained pristine. The untapped nature of the country made it a hotspot for industrial development. In 1996, the Ministry of Natural Resources granted logging concessions to Malaysian companies in the Toledo District that totaled 480,000 acres. As Maya people primarily occupied these areas, they were the ones who were adversely affected by these concessions.⁷⁴ Logging concessions on Maya people's lands are detrimental to their livelihood, culture and overall wellbeing. Noise from logging diminishes the presence of wildlife and affects fishing and hunting practices, which are essential to Maya cultural and physical survival. Logging causes irreversible damage to the soil, which can have devastating consequences for Maya subsistence patterns, as they practice rotational farming. In exchange for a few low wage jobs, the Maya people were left with muddy waters, damaged roads and loss of wildlife.⁷⁵ Despite the apparent adverse consequences, the concessions continued to be granted without the consent of the Maya people. The need for the Maya people to have their land rights affirmed in courts became clear.

4.2 - The Beginnings of the Land Rights Movement: The Legacy of Activist Julian Cho

Forest management in Belize clearly prioritized the interests of industry over the well being of local populations.⁷⁶ The Maya people recognized the need more than ever

⁷² *Supra* note 3 at 2.

⁷³ Belize National Library Service and Information System, "Independence" (2017) online: <www.bnlsis.org/documents/52.html>.

⁷⁴ Anaya, James "Maya Aboriginal Land and Resource Rights and the Conflict Over Logging in Southern Belize" *Yale Human Rights & Development Law Journal* 1.1 (1998) 8.

⁷⁵ Nations, James D. *The Maya Tropical Forest People, Parks, and Ancient Cities*. Austin: University of Texas Press, 2006, 237.

⁷⁶ Anaya, James. "Reparations for Neglect of Indigenous Land Rights at the Intersection of Domestic and International Law – The Maya Cases in the Supreme Court of Belize" (2008) Arizona Law Indigenous Peoples and Policy Law Program.

to “preserve humanity and nature, not the reckless use of resources, based off of greed that hastens the extinction of our way of life and that of human kind.”⁷⁷ Prominent Maya activist, Julian Cho, spoke out against logging concessions in a series of newspaper articles:

“The local Mayas, who see themselves as the custodians of the rainforest, regard the logging concessions as blatantly disrespectful to their dignity. Any foreign intervention is questioned within the communities which border the forest reserve as by all of the Maya land claims in the region, an intrusion of exploitative, land-destroying operations directly threatens the Maya communities.”⁷⁸

Julian Cho established the Toledo Maya Cultural Council (TMCC). The TMCC was created in response to the pressure of assimilation systematic destruction of Maya culture by the government of Belize.⁷⁹ The purpose of the TMCC was to promote the economic, social and educational interests of the Maya people. With full participation of the Maya communities, Cho spearheaded an initiative to map out all of the Maya communities. In collaboration with the Toledo Alcaldes Association (TAA),⁸⁰ the Indian Law Resource Centre in Colorado and Geo Map from the University of California in Berkley the “Maya Atlas” was published, which allowed for a better understanding of the Toledo landscape, defined by the Maya people themselves. The Maya people selected the layout, colours and edited the final draft of the Atlas. The result was a comprehensive, village-by-village understanding of the Maya customary land. The Maya Atlas assisted the Maya in officially declaring the historical boundaries of their land. These boundaries had not been delineated in the past because they were seen as a European concept and did not coincide with the Maya belief in a communal land system. The Atlas would also help the communities in their claim for legal rights to their customary land. It would also dispel the notions that they were recent immigrants to Belize and that the Maya were an ancient race known only through archaeological sites.⁸¹ The Maya are the original habitants of Belize and were living in the country as early as the 16th century. They continued to be the principal inhabitants of Southern Belize from the 16th-18th century.

⁷⁷ *Supra* note 3 at 5.

⁷⁸ *Supra* note 14 at 178.

⁷⁹ *Supra* note 3 at 2.

⁸⁰ The Toledo Alcaldes Association was established in 1992 as the legal representative of the Maya communities and was given recognition by the government.

⁸¹ *Supra* note 3 at 3.

In 1997, the TMCC led by Julian Cho initiated a case in the Supreme Court of Belize, the trial court of general jurisdiction, against the Belizean government. In *TMCC v. Attorney General of Belize*, the Maya people argued that their rights over lands and resources had been violated. The lawsuit challenged the government's right to grant concessions on their land and assisted the Maya in gaining legal security over their lands.⁸² As the case was moving through the courts, Julian Cho died under very suspicious circumstances and the Maya people strongly believe that he was murdered. While in Belize, I was told that the night before Cho died, representatives from the Malaysian forestry department visited him. When he told the foresters that he would not drop the lawsuit, they threatened him. The next day Cho was found dead and, although it was believed that he had fallen from a roof, there were no witnesses. Shortly after Cho's death, the Malaysian loggers left Belize because a hurricane destroyed the forest in the exact same pattern they were planning to extract the timber.⁸³ Julian Cho's presence continues to be strongly felt throughout Toledo as the Julian Cho Society (a local charity) and Julian Cho Technical Institute (the local high school) were named in his honour.

4.3 - Securing Communal Land Rights

After Cho's death, there were unreasonable delays throughout the court proceedings and no action was ever taken on the legal claim. The Maya people became increasingly frustrated and in 1998 they filed a petition before the Inter-American Commission on Human Rights (IACHR). The IACHR asked the government to clarify and protect the Maya people's communal property rights.⁸⁴ In 2005, the IACHR issued a compelling report that recognized the Maya people's collective rights to the lands that they have consistently used and occupied. They also suggested the government demarcate the land so that the community boundaries could be clearly identified.⁸⁵ The

⁸² *Supra* note 3 at 1.

⁸³ Personal communication with Cristina Coc, 2017.

⁸⁴ *Maya indigenous community of the Toledo District v. Belize* (2004), Inter-Am Comm HR, No 40/04, Annual Report of the Inter-American Commission on Human Rights: 2003-2004, OEA/Ser.L/V/II.122 Doc. 5 727.

⁸⁵ United Nations Office of the High Commissioner, "The Case of the Santa Cruz 13" (2016), online: <<http://www.ohchr.org/Documents/Issues/CulturalRights/DestructionHeritage/NGOS/MayaLeadersAlliancain%20Belize.pdf>>.

recommendations from the IACHR report gave the Maya people more leverage to once again file their claim before the Supreme Court of Belize.

In 2007, two Maya villages, Conejo and Santa Cruz, filed a lawsuit at the Supreme Court of Belize with the support of the MLA asserting that the government had violated the Maya people's constitutionally held rights to property by failing to recognize their customary land rights based on the longstanding land use and occupation.⁸⁶ On the day the lawsuit was filed, 300 people from several Maya villages gathered in Belize City to demonstrate their solidarity and show their support for the lawsuit. The government argued before the court that the Spanish colonizers forcibly removed the Maya people and that the Maya people settled in their present locations after British assertion of sovereignty. Therefore, the Maya people should be considered recent migrants and not Indigenous Belize. This meant that they could not have any claim over the land that they currently occupied and ownership should be left in the hands of the government. The government's argument did not address the fact that these relocations were involuntary and the result of colonial processes.

Since Belize is a former British colony and a common law jurisdiction, property rights exist where occupancy can be established or the use of land has been sustained over a period of time.⁸⁷ The judge presiding over the case, Justice Abdulai Conteh, considered the theoretical origins of property law from other common law countries and recognised the importance of embracing Indigenous land rights within the common law of Belize due to the Maya people's long-standing occupancy. He ruled in the Maya peoples' favour, arguing that the Maya system of customary land tenure gave rise to property rights within section 3(d) and 17 of the Belize Constitution.⁸⁸ These sections protect against the arbitrary deprivation of property, prescribe certain procedures for taking property and guarantee just compensation for such takings. The court found that,

⁸⁶ *Aurelio Cal v. The Attorney General of Belize*, Claim No. 171 of 2007, Supreme Court of Belize, A.D. 2007.

⁸⁷ Borrows, John. "Aboriginal Title and Private Property" *Osgoode Hall Law Journal* 71.5 (2015) 112; *Attorney General for British Honduras v. Bristowe* 6 App. Cas. 143 (P.C. 1880) (appeal taken from British Honduras).

⁸⁸ Campbell, Maia & Anaya, James. "The Case of the Maya Villages of Belize: Reversing the Trend of Government Neglect to Secure Indigenous Land Rights" *Human Rights Law Review* 8.37 (2008) 380; Barelli, Mauro "The Role of Soft Law in the International Legal System: The case of the United Nations Declaration on the Rights of Indigenous Peoples" *International and Comparative Law Quarterly* (2009) 58.

“Maya customary land tenure exist[s] in *all* the Maya villages in the Toledo Districts [sic] and where it exists, gives rise to collective and individual property rights within the meaning of ... the Belize Constitution.”⁸⁹

Conteh also held that Belize is obligated to protect these rights under international law, as they voted in favour of the United Nations Declaration on the Rights of Indigenous People (UNDRIP) stating, “General Assembly resolutions are not ordinarily binding on member states. But where these resolutions or Declarations contain principles of general international law, states are not expected to disregard them.”⁹⁰ Justice Conteh issued the first court judgment to ever apply UNDRIP, barely a month after its adoption.⁹¹ His willingness to cite UNDRIP in his judgment demonstrates the ability of international soft law to shape domestic law.

The government adopted a narrow interpretation of the 2007 judgment only respecting the claimant community’s property rights, while continuing to grant logging concessions in other Maya communities without their consent.⁹² Therefore, the MLA felt it necessary to launch a representative action on behalf of all the Maya villages in the Toledo. In 2010, Conteh presided over the case once again and ruled in favour of the claimants thereby extending land rights to all the Maya people in Belize.⁹³ Later in the year, Dean Barrow, the prime minister of Belize, announced that Conteh’s contract would not be renewed after he reached retirement age. The decision was likely politically motivated as Conteh ruled against the Barrow administration on several constitutional cases, including the Maya land rights judgments. This decision cast doubts on the independence of the judiciary and was widely criticized by the public as well as the Belize Bar Association.⁹⁴

Conteh’s judgment was upheld at the Court of Appeal of Belize in 2013, yet the government of Belize was still not prepared to accept the decision. They were concerned

⁸⁹ *Supra* note 86 at para 126.

⁹⁰ *Supra* note 86 at para 131.

⁹¹ Cerone, John. *Tracing the Roles of Soft Law in Human Rights*. New York: Oxford University Press, 2016, 209.

⁹² Doyle, Cathal. *Indigenous Peoples, Title to Territory, Rights and Resources: The Transformative Role of Free, Prior Informed Consent*. New York: Routledge, 2014, 105.

⁹³ The Maya Leaders Alliance and the Toledo Alcaldes Association on Behalf of the Maya Villages of Toledo District v. the Attorney General of Belize and the Minister of Natural Resources and Environment, Claim No. 366 of 2008, Supreme Court of Belize, A.D. 2010.

⁹⁴ Tillet, Glenn. “Barrow Hacks Belize’s Justice System” *The National Perspective* (24 April 2010) online: <https://issuu.com/national_perspective/docs/84th_edition_1-20>.

about the far-reaching implication for the logging and petroleum industries.⁹⁵ Barrow went so far as to describe the decision as injurious to the public interest, national unity and development.⁹⁶ In April 2015, the case was heard before the Caribbean Court of Justice (CCJ), the highest appellate court in Belize. It is important to note that two of the lawyers representing the government both have a close connection to the Prime Minister. Denys Barrow is Prime Minister Barrow's younger brother and Naima Barrow is his niece, providing the public with more reason to doubt the independence of the judiciary. After the trial concluded, a consent order was issued ordering that the government commit to promoting and protecting the land rights in anticipation of the judgment. Barrow attempted to mislead the public by continuing to refuse to recognize the validity of Maya land rights,

“That consent order does establish that the Maya have Indigenous title. As I understand it, Indigenous title is a term that carries a particular meaning in international law and practice. In effect, if the Maya had Indigenous title, that would mean they would be entitled to communal land ownership. The consent order does not establish that.”⁹⁷

In October 2015, the CCJ released their judgment, upholding the lower court decisions, leaving the chain of successes unbroken. When courts in common law jurisdictions have considered Indigenous title, they have ruled that Indigenous groups hold it collectively and the distribution of those rights can be determined by custom.⁹⁸ The Belize judgment follows this theoretical approach, referring on multiple occasions to the Maya people's collective rights based on their customary land tenure systems. The judgment confirmed that Indigenous peoples have collective property rights based on their customary land tenure systems and that governments has an obligation to recognize and protect those rights. The court also ordered the government to establish a fund of \$300,000 (BZE) as a first step towards reconciliation, consultation and compliance. The funds were to be used

⁹⁵ Ramos, Adele. “CJ Rules For Maya” (29 June 2010), online: <<http://amandala.com.bz/news/cj-rules-for-maya-implications-huge/>>.

⁹⁶ Minority Rights, “MRG welcomes Supreme Court decision upholding Maya land rights in Belize, but deplores Government decision to appeal” (20 August, 2010) <<http://minorityrights.org/2010/08/20/mrg-welcomes-supreme-court-decision-upholding-maya-land-rights-in-belize-but-deplores-government-decision-to-appeal/>>.

⁹⁷ Plus TV Belizean News, “PM defines Maya land rights settlement” (30 April 2015), online: <<http://www.plustvbelize.com/p-m-defines-maya-land-rights-settlement/>>.

⁹⁸ Slattery, Brian “Understanding Aboriginal Rights” Canadian Bar Review, 66.4 (1987) 767.

to implement mechanisms that would identify and demarcate village lands through a collaborative process that effectively engages the Maya people. To ensure that the government complied with the consent order, the CCJ decided to retain supervision of the case so that they could continue to hold the government accountable and levy fines if they did not comply.

During a press conference after the case, Dean Barrow was asked why the Government had resisted providing damages for the land incursions that the Maya people experienced. The CCJ judgment did not grant the plaintiffs damages because the evidence was not satisfactory, and it relied mostly on anecdotal reports from the villagers.⁹⁹ Although the damages could not be proven in a court of law, many were in agreement that the government was responsible, and providing damages would be a wise policy decision. Barrow stated that the Maya people did not make a legal case for damages and he would not provide damages simply in the spirit of reconciliation,

“Well, if I started doing that, when will I give to the Garifuna Council damages? When will I give the Kriol organization damages? We are all historically oppressed people, you know.”¹⁰⁰

Barrow’s quote implies that the Maya people would be getting preferential treatment if they were to be compensated but, in reality, this action would work towards remedying past injustices. His statement demonstrates his unwillingness to recognize the government’s wrongdoing as well as a lack of acknowledge of the unique struggles faced by the Maya people.¹⁰¹

This historical synopsis has recounted the last two decades that led up to the landmark CCJ judgment where the Maya communal land system was finally legitimized. At long last, the colonization, dispossession and discrimination that the Maya people have experienced throughout history were officially recognized. The CCJ judgment is an example of how social movements can influence constitutional interpretation demonstrating that litigation has the potential to help frame a movement, bring it much

⁹⁹ *The Maya Leaders Alliance and the Toledo Alcaldes Association on Behalf of the Maya Villages of Toledo District v. the Attorney General of Belize and the Minister of Natural Resources and Environment*, Claim No. BZCV2014/002 Caribbean Court of Justice, A.D. 2015 at para 63.

¹⁰⁰ Channel 5 Belize, “PM Resisting Compensation to the Mayans” (29 April 2015), online: <<http://www.7newsbelize.com/sstory.php?nid=32306>>.

¹⁰¹ Cohen, Stanley. “Government Responses to Human Rights Reports: Claims, Denials and Counterclaims” *Human Rights Quarterly* (1996) 18.517, 530.

needed publicity and contribute to increased bargaining power.¹⁰² The case garnered international attention and many hoped that it would set a precedent for Indigenous land rights worldwide. The MLA and the Maya people were optimistic about their future and began focusing their attention on strengthening governance in their communities. They thought that the trend of government neglect and resistance was officially over.

In the next sections of the paper, two central issues relating to land rights, Indigenous governance and resource management, will be explored.

5 – The Role of the Indigenous Governance System in Relation to Land Rights

Legal pluralism puts forward a more nuanced understanding of traditional governance, which emphasizes the role of non-state actors.¹⁰³ A classic example of this is the traditional governance system in Belize, the Alcalde system. This system is based on the customary law in Maya villages and precedes British and Spanish colonizers.¹⁰⁴ An Alcalde is a traditional community leader who serves as a local magistrate playing both an administrative and a judicial role at the community level.¹⁰⁵ Alcaldes have the right to control and manage the use and occupation of village lands, judge disputes between villagers, determine punishments for petty crimes and levy small fines. They also maintain village order and protect the cultural integrity of the community. Alcaldes call for *fajinas*, the communal cleaning of villages, and oversee the management of community land. The Alcalde system is established in Belizean law through the *Inferior Courts Act*.¹⁰⁶ Once Alcaldes are appointed through an election, they take on the responsibility of advancing the community's interests. The modern-day practice for electing Alcaldes proceeds as follows. Four Maya people are nominated and then the community votes by secret ballot to select the chief Alcalde. The candidate with the

¹⁰² Nejaime, Douglas. "Winning Through Losing." *Iowa Law Review*, 96 (2011) 965.

¹⁰³ Richardson, Benjamin. "The Ties that Bind: Indigenous Peoples and Environmental Governance" *Comparative Research in Law & Political Economy* (2008), 3.

¹⁰⁴ Hemmat, Samane. "Belize: Attempts to Undermine the Alcalde System" (6 July 2017) online: <<http://www.worldpolicy.org/blog/2017/07/06/belize-attempts-undermine-alcalde-system>>.

¹⁰⁵ Government of Belize, "Local Government" (2015), online: <<http://www.belize.gov.bz/index.php/our-governance/how-we-are-governed/local-government>>.

¹⁰⁶ *Inferior Courts Act*, 2000 (Belize) Chapter 94.

second highest number of votes becomes deputy Alcalde and the person with the third most votes becomes the chief of police. At a swearing in ceremony hosted by the Solicitor General of Belize, the chief Alcalde takes an oath to protect the Maya people in their community to the best of their ability. The TAA was also given recognition and a scroll by Queen Elizabeth the II on February 24, 1994, legitimizing the Alcalde system.¹⁰⁷ Bi-monthly meetings are carried out at the MLA office to update the Alcaldes on issues concerning their communities.¹⁰⁸

The Alcaldes system is closely connected to the land rights case as traditional farming practices are an essential component of the governance structure in Belize. Land use in Maya communities is governed by customary rules that are enforced by the Alcaldes. After the Maya land rights judgment was issued, there were attempts made by government to threaten and undermine the Alcalde system. This impacted the Maya peoples' ability to enforce their land rights guaranteed by the CCJ judgment. A weakened governance system presents the Maya people with significant barriers to implementing the CCJ order and judgment. It is important to note that the Maya people do not have political representation in the government to raise their concerns at the national level.¹⁰⁹ Therefore, it is more difficult to enact policies that work to protect the interests of the Maya people.

5.1- Subordinating the Alcaldes:

5.1.1 - The Rupert Myles incident

In June 2015, just two months after the CCJ issued the consent order, the government made their first attempt to subordinate the Alcaldes. Rupert Myles took up residency in the village of Santa Cruz and bulldozed over a sacred site of the Maya temple, Uxbenka. Even though the Alcaldes in the village issued multiple warnings to Myles, he continued to disobey their orders and even threatened them with a gun. The Alcaldes ultimately decided to arrest him. Myles brought criminal charges against the

¹⁰⁷ *Supra* note 3 at 6.

¹⁰⁸ *Supra* note 3 at 4.

¹⁰⁹ Maya People of Southern Belize et al., *Maya Atlas: the Struggle to Preserve Maya Land in Southern Belize*. Berkley: North Atlantic Books, 1997, 5.

Alcaldes, claiming that he was assaulted and that he had a constitutional right to live wherever he desired in Belize. The Alcaldes argued that Myles had destroyed a sacred site and also acted in violation of the village's customary law as he took up residency in the village without following the customary practices to seek permission from the community.

Myles depicted the Alcaldes' actions as racist as he was a Garifuna man in a common law marriage with a Maya woman. The Government of Belize took the opportunity to publicly denounce the Alcaldes' actions, quickly coming to the defense of Myles. Barrow misrepresented the events to the public stating, "in my view they've lost whatever moral high ground they ever had... Tying up this man, falsely imprison him, physically assaulting him - that is absolutely intolerable."¹¹⁰ Myles disregarded the Maya rule of law when he destroyed a sacred site and interfered with the use and enjoyment of Maya land. Instead of acknowledging how Myles disrespected Maya culture and customary law, Barrow claimed that it was Myles who was being treated unfairly and discriminated against. In so doing, Barrow denied the harm caused to the true victims, the Maya people. As the victims struggle is more effective if the victim is able to garner sympathy, Barrow was likely hoping that his portrayal of the Alcaldes as radicals who were acting beyond their jurisdiction would result in the Maya people losing public support, proving harmful to their land rights movement.

A few days after the Rupert Myles incident, without notice of arrest, 12 villagers from Santa Cruz were taken into police custody after being charged with false imprisonment.¹¹¹ They were awoken from their beds and were not even given time to put on shoes. Seven months later, Maya activist Cristina Coc was taken into custody although she played no role in Mr. Myles' detention and was not even present at the time. The arrests were politically motivated and an attempt by the government to silence the voice of the Maya people. The prosecutors could not present any evidence and eventually all charges were dropped.¹¹² With the encouragement of the MLA, the village of Santa Cruz decided to file a civil action against the Myles and the government of

¹¹⁰ *Chanel 7 News*, "PM says outrageous, Mayans say justifiable" (23 June 2015) online: <<http://www.7newsbelize.com/printstory.php?func=print&nid=32845>>.

¹¹¹ *Channel 7 News*, "Charges Reduced for Santa Cruz 13" (16 December 2015) online: <<http://www.7newsbelize.com/sstory.php?nid=34628>>.

¹¹² *Ibid.*

Belize for a breach of the CCJ consent order, asserting that the government failed to prevent interference of the village's property rights.

5.1.2 - The Crique Jute Incident

As we drove along the bumpy dirt road into Crique Jute, Monica Coc, the lawyer who works with the MLA, gave me some background information about the client that we were going to meet to prepare for trial. He was the village Alcalde and he was being charged with false imprisonment and assault. The Alcaldes took another villager, Bruce Cho into custody for breach of peace after he continued to use land that went beyond his property line despite numerous warnings from the Alcaldes. Monica believed that the charges were an act of subordination by the government and an example of resistance to the court affirmation of land rights. Similar to the Rupert Myles case, the Alcaldes had acted within their jurisdiction granted to them by the Inferior Courts Act. When we arrived, I watched as Monica asked the Alcalde questions, taking on the role of the appellant's attorney. "Mr. Cho, you are nothing more than a common criminal. Who gave you the authority to assault this man?" He shot back "I am an Alcalde, I was doing my job." "You are no Alcalde" Monica challenged, "What proof do you have of this?" He responded calmly and confidently, "I have no doubt that I am an Alcalde. My village appointed me. I was sworn in at a ceremony and I received a stipend. People treat me as an Alcalde, and so I act as though I am an Alcalde."

The court hearing was later that month. Rather than a formal trial, the judge at the hearing would read the decision. The Alcaldes came out in full force and alongside the MLA team, we filled up most of the benches in the courtroom. It was a long drive from Toledo to Belize City, almost four hours. We left Punta Gorda at around 4:30 in the morning. I was so impressed with the Alcalde's dedication as some of them had woken up at 2 am and walked almost three hours to the main road in order to meet up with us and catch a ride. The lawyer on the opposing side stood alone. Bruce Cho decided not to make an appearance. Cristina told me about how she had sympathy for both Myles and Cho. She believed that they were being misled by the wrong people and were being used as pawns to turn the Maya people against each other. The judge walked in and we all stood, eagerly awaiting the decision...

Through the years, the Government of Belize has consistently appointed the Alcaldes that were elected by their villages through a swearing in ceremony. They also provide them with a small stipend and publish their names in the Gazette. The Gazette is distributed to the public on a monthly basis, making updates on laws, statutory instruments and legal notices widely available to the public.¹¹³ In 2017, the government began to neglect their duty to publish the names of the Alcaldes in the Gazette.¹¹⁴ The Maya community believes that it should not matter whether the names are published in the Gazette because their role is well established in Maya customary law and the Alcalde's jurisdiction is laid out clearly in the *Inferior Courts Act*. This procedural delay has limited the Alcaldes ability to carry out their roles within their own communities and has resulted in a postponement of the Alcaldes receiving their stipends. In the case brought against the Alcaldes in Crique Jute, the claimant argued that the Alcaldes did not have the authority to arrest him because their appointment was not legitimate because a government official did not swear them in at a ceremony. Hubert Elrington, the lawyer who represented Bruce Cho, has close ties to the Attorney General of Belize and is a very vocal opponent of Maya land rights. Cho likely believed that he had a strong claim against the Alcaldes because of misconceptions about the legitimacy of the Alcaldes appointment being propagated by people like Elrington. On June 2, 2017, the Belize Supreme Court sided with the Alcaldes upholding their "no case" submission and ordered costs to be paid to the defendants.

The cases in Santa Cruz and Crique Jute demonstrate the persistence of colonial attitudes in Belize and are attempts of the State to narrow the Alcaldes scope of power, effectively limiting their ability to enforce the CCJ judgment. The legal action taken against Alcaldes for exercising their duties is completely unfounded. These cases take up much of the MLA's already limited resources and should be seen as another strategy to obtain hegemony over the Maya people. The government's failure to recognize the legitimacy of the Alcalde system is a violation of the CCJ's judgment as well as article 18 of UNDRIP,

¹¹³ News 5, "Gov't Gazette now on World Wide Web" (25 April 2000) online: <<http://edition.channel5belize.com/archives/21110>>.

¹¹⁴ Hemmet, Samane. "Alcalde System Under Threat" (August 2017), Justice Corporate Accountability Project.

Indigenous peoples have the right to participate in decision-making in matters, which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.¹¹⁵

The government should honour its legal commitments by remedying issues with Alcaldes appointment. Ideally the government would publically affirm their support for the Alcaldes and cease spreading misinformation to the public. The Alcaldes play a very important role in the development and management of Maya village lands and are a central component of effectively enforcing the CCJ judgment. As the Maya activist I interviewed told me:

The reason that the Maya people have been able to maintain pressure on the government is because of the Alcalde system. It is owned by the communities. Although the government has tried to break it down, the communities believe that their own system of governance is the single most important mechanism that allows us to ensure accountability, transparency and truthfulness to our philosophies and values as Indigenous peoples.¹¹⁶

Throughout the summer of 2017, the MLA attempted to reach out to the government on numerous occasions about the issues pertaining to the Alcaldes appointment but received no response. In September 2017, after repeated attempts to contact the Solicitor General, he finally agreed to meet with the MLA and conduct the swearing in ceremony. The continuous pressure placed on the government by the MLA has proven effective, giving the Maya people reason to remain optimistic.

6 – Maya Resource Management

As a result of a collaborative effort between the Forestry Department and the United Nations, the Reducing Emissions from Deforestation and Forest Degradation (REDD+) project was approved. The project declared much of the land in the Maya village of San Pedro Columbia a “protected area.” REDD+ is a climate change mitigation solution, which incentivizes developing countries to protect their forests by rewarding them with payments for actions that reduce or remove forest carbon emissions.

¹¹⁵ *United Nations Declaration on the Rights of Indigenous Peoples*, 29 June 2009, A/RES/61/295 article 18 (entered into force 13 September 2007).

¹¹⁶ Mis, Pablo. Personal Interview. 19 Dec 2018.

The MLA expressed their concern about the project, as the Maya people were not adequately consulted despite the fact that the proposed initiative took place primarily on Maya lands. The creators of the project did not receive the consent of the Maya community and they failed to recognize the importance of the Maya people's historical and cultural connection to forests. During a controlled burn in the protected area, which is a component of routine forest management, two Maya villagers lost their farms in the fire. This situation demonstrated that a protectionist approach that excludes local communities does not give way to effective measures of forest conservation or management.

At a meeting with the forestry department, the MLA came to support the families affected by the fires. At one of the community meetings I attended, a Maya woman spoke about the impact of losing the farm on her family. Her voice was filled with both anger and sadness as she addressed those present at the meeting. She asked the government how she was supposed to feed her five children after they had lost their crops in the fire. For months, she had been relying on the generosity of her neighbours, but she did not want to live with this uncertainty any longer. The MLA urged the government to compensate the farmers for the physical damage to the land and the psychological trauma that they had experienced. They cautioned that the government needed to work more closely with Indigenous communities. The next morning, we met with independent consultants and representatives from the forestry department to visit the site and create a damage assessment report. We walked 5 miles up to their camp and were devastated to see that their corn that had once been piled 5 feet high in a shed now lay in a pile of burnt rubble. The only thing left unscathed was a sour sop tree. As I looked at the tree, I was reminded of the strength and resilience of the Maya people. Despite the struggles that they face, they continue to stand strong and actively fight against the dispossession they were experiencing. I couldn't help but think that if the government had upheld their commitment to demarcate the Maya lands or adequately consulted with the community, this tragedy could have been avoided. Instead, Maya conservation practices were undermined in the name of environmental protection.

The Toledo district, where the Maya people reside, contains the most intact tropical wet forest in Belize. The Maya people subsist through *milpa* (the production and

growth of corn and rice) and *matambre* (Corn planted along the river).¹¹⁷ Other ground foods beside corn are planted such as: sweet potato, cassava, soup yam, cocoa, yam, spinach, banana and plantains.¹¹⁸ The land is cleared with a machete, the plant materials are then dried and burned for biomass before seeds are panted. Many crops are consumed in the household and the excess harvest is sold at the market, providing a source of income for families.¹¹⁹ The Maya also harvest lumber and palm to build their houses. The Maya people do not stand opposed to development, but instead are opposed to development that would have a negative impact on the social structure of the local Maya people.¹²⁰ The Maya people have also begun to incorporate modern resource management practices, such as permitting, into resource management plans in their communities. As the Maya activist I interviewed explained to me,

Indigenous communities are not static, they evolve and that is why they have survived this long. The Maya people continue to promote the stewardship of natural resources, not only on the basis of customary practices but also with the harmonization of conventional proposals for the protection of biodiversity. Maya people have begun a permitting process for logging. They have retained their customary process but also recognize that life is changing. Now they are borrowing. They are borrowing conventional ways and mechanisms for policing, ensuring transparency and accountability.¹²¹

The CCJ judgment confirmed that the informed consent of the Maya people must be obtained before any development that could affect the use or enjoyment of their land takes place. This is a difficult task as the government has not fulfilled their obligation to demarcate the Maya lands and the community boundaries remain unclear. Furthermore, the agricultural development policies in Belize were made without consultation of the Maya people. *Horizon 2030*, Belize's plan to connect various efforts including climate change, sustainable development and forest management makes no reference to the Maya people.¹²² This demonstrates ill faith on behalf of the government as well as their failure to take seriously their responsibility to develop policy frameworks with the Maya people. Superficial representation of Maya people on committees is the government's way of

¹¹⁷ *Supra* note 109 at 19.

¹¹⁸ *Supra* note 109 at 19.

¹¹⁹ *Supra* note 109 at 38.

¹²⁰ *Supra* note 109 at 126.

¹²¹ Mis, Pablo. Personal Interview. 19 Dec 2018.

¹²² "National Development Framework for Belize." *Horizon 2030*, Government of Belize.

keeping up the illusion that they are considering the Maya people's interests. These types of consultation processes lack inclusivity and legitimacy. They are not meaningful and do not consider the voice of the Maya people. When I asked the Maya activist about the reluctance of the government to incorporate the interests of Maya people into national policies he responded that there were larger political issues at play,

The government doesn't think that the Maya people know what is good for them. The courts have forced the government to recognize the rights of Indigenous people. It is not enough to just recognize, but it is a good starting point. We need to ensure that there is protection of the Maya people. Protection not just in the sense of a court order but in the sense of ensuring that the Maya people are recognized in all laws and policies of this country. Various laws and policies need to reconcile with this recognition of Belize. Very few policies make mention of the Maya people. It is not enough to recognize and say we will protect the Maya people, we actually have implement policies that do so.¹²³

In order to effectively implement the CCJ judgment, the government should move toward decentralization so that local communities will be responsible for overseeing their own forest management programs. This would allow communities to be accountable for their own resource management and contribute to more secure land rights for the Maya people.

Maya stewardship over lands has been met with opposition. The government often attributes any decrease in forest cover to Maya farmer's slash and burn practices. These claims were brought before the Inter-American Commission on Human Rights in 2004 as part of its defense against Maya claims to Indigenous lands saying that the Maya communities, "must assume responsibility for the impact of their own agricultural practices on the environment...and the deforestation caused."¹²⁴ These statements have contributed to anti-Indigenous sentiments, as some believe that the Maya farming practices are destroying the forests in Belize. The government has yet to provide evidence to support these claims. To the contrary, customary land use has been proven to contribute to stable forest coverage.¹²⁵

Although the CCJ judgment seemed to favour Indigenous peoples and allowed them to continue with subsistence harvesting, due to an insufficient transfer of power to

¹²³ Mis, Pablo. Personal Interview. 19 Dec 2018.

¹²⁴ *Supra* note 84 at 174.

¹²⁵ *Supra* note 109 at 124.

Maya communities and misinformation propagated by the Belizean government, some communities struggled with the newfound responsibility of issuing extraction permits on their land.¹²⁶ After the CCJ judgment was handed down, the MLA began to travel to each Maya community to update the villagers and educate them about their rights. However, in some cases, industry and government got to the remote Maya communities first. The government and foreign companies actively encouraged the Maya people to take advantage of their newly affirmed land rights and pressured them to grant logging concessions to foreign companies. One Maya activist described the message that the Maya people received from the government and foreign buyers as follows:

“You have gone to court and have asserted that you have rights to these lands and the resources on them and you have the right to log and make some money from the rosewood. Nobody can stop you. Isn’t this what you fought for? Don’t you have authority over these lands?”¹²⁷

In essence, the CCJ judgment contributed to the exploitation of the forest and the Maya people. Instead of encouraging the Maya communities to assert their land rights and create their own management plans, the government and industry began to place pressure on the communities to sign away their land management authority by granting logging concessions. In cases where forests were not managed sustainably in Maya communities, it was usually the result of the actions of government and industry, which should not be confused with customary land use practices.

6.1 - Forest Management and Indigenous Governance

It is important to consider who controls resources and how the rules and conditions of production and exchange are set in political struggle.¹²⁸ Power dynamics contribute to inequitable benefit sharing where the elite capture all of the benefits while the less powerful are left with the burdens, reinforcing inequality.¹²⁹ The uneven distribution of power directly impacted the Maya people’s ability to manage their land effectively. It is also important to ask, “who stands to benefit from development?” The answer can be found by analyzing the interests of those who push for development.

¹²⁶ Perez, Arlenie, et al. “Belize-Guatemala Territorial Dispute and Its Implications for Conservation.” *Tropical Conservation Science*, 2.1 (2009) 19.

¹²⁷ *Supra* note 3 at 54.

¹²⁸ Robbins, Paul. *Political Ecology: a Critical Introduction*. Victoria: J. Wiley & Sons, 2012, 84.

¹²⁹ *Ibid* at 202.

Belize does not produce the mahogany or rosewood for itself but instead relies heavily on an export market. Large commercial export companies in Belize are those who stand to gain the most and, accordingly, place pressure on Maya communities to begin extracting timber. This pressure was placed on the Maya people before they had decided on management plans for their communities or fully understood the implications of the land rights judgment.

The government of Belize is choosing to avoid their responsibility to respect the Maya people's customary right to land as they continue to violate the CCJ court order. The power imbalance between Indigenous groups and the government needs to be remedied before forest management plans can be considered equitable. Further, the management plans must prioritize local knowledge, increasing the capacity for local authority and strengthening indigenous forest management institutions.¹³⁰ The Belizean government must also recognize the legitimacy of the Maya land rights and their governance system. The Alcaldes are responsible for enforcing the system of customary rules to ensure that timber growth and extraction are tracked carefully.

As the Maya activist explained to me,

It is essential for Indigenous people to have their own system of governance. The Indigenous governance system is the pulse of the customary existence of Indigenous people on their land. This mechanism allows us to create a vibrant community. Indigenous communities are evolving, there is a bridging taking place between the community's way and the conventional ways of permitting. The borrowing of the permitting is not what is most important. It is the community's ability to establish their own rules for the permitting process that is most important. Maya people have rights to land, they have a close relationship with their environment. They need to be a part of the decision-making processes on their own terms.¹³¹

The MLA has worked with the Alcaldes to strengthen environmental governance in Maya territories to ensure that the Maya people can continue to be sustainable stewards of their lands. The Maya develop their own land management plans, establish control mechanisms for resource extraction and recommend policy reform for reducing forest cover loss. The permitting process, which is administered by the Alcaldes, has resulted in far less illegal logging while allowing villages to maintain direct control over the

¹³⁰ *Ibid* at 51.

¹³¹ Mis, Pablo. Personal Interview. 19 Dec 2018.

monitoring and enforcement. The fees collected from the permits are used to improve infrastructure, such as roads and schools in the communities.¹³²

6.2 - The Contribution of Maya Communities in Managing the Commons

In his popularized theory, the Tragedy of the Commons, Garrett Hardin explained the reason behind the mistrust of local populations' ability to manage their own resources. This theory refers to a scenario in which commonly held resources are degraded because individuals would act in their self-interest, behave opportunistically and seek to maximize short-term results to the detriment of the community and the sustainability of the resource. The solution to the Tragedy of the Commons was either privatization or strict government regulations.¹³³ However, this theory does not apply to situations where there is government corruption, such is the case in Belize. It also does not apply to situations where the traditional rights of commoners are ignored, such is the case for the Maya people in Belize. The Maya did not have their right to land recognized until 2015. Before this time, their land was constantly under threat of industrial development.

Under certain conditions, common property regimes contribute to effective land management:¹³⁴

“Common property regimes are not the free-for-all that they have been described to be, but are structured ownership arrangements within which management rules are developed, group size is known and enforced incentive exist for co-owners to follow the accepted institutional arrangement and sanctions work to insure compliance. Resource degradation in the developing countries, while incorrectly attributed to common property systems intrinsically, actually originates in the dissolution of local-level institutional arrangements who's very purpose was to give rise to resource use patterns that were sustainable.”¹³⁵

¹³² United Nations Development Programme. 2019. *Maya Leaders Alliance (MLA), Belize*. Equator Initiative Case Study Series. New York, NY, 10.

¹³³ Hardin, Garrett. “The Tragedy of the Commons.” *Science*, vol. 162, Dec. 1968, 1244.

¹³⁴ Humphreys, David. *Logjam: Deforestation and the Crisis of Global Governance*. London: Earthscan, 2006, 65.

¹³⁵ *Supra* note 68 at 81.

Political economist Elinor Ostrom challenges Hardin's theory as it "painted a pessimistic vision of the human prospect."¹³⁶ Further, state controlled privatization could also be counter-productive and disempower communities who had formally been stewards of those lands. Ostrom argued that under certain conditions, local communities can effectively manage their collective resources and in some cases resources are protected at higher levels where local people participate in monitoring. According to Ostrom's theory, succeeding as a group is the main selective force in human evolution and therefore resources will be better managed by communities that benefit from them. Her theory focuses on the power of social control mechanisms to regulate the use of the commons. She found that local populations often carefully monitored the use of the land and developed rules for behavior.¹³⁷

Ostrom's field research led to the development of a set of principles, which have contributed to the effective mobilization for the local management of common pool resources (CPR). CPRs are most successfully managed when the following conditions are met: clearly defined boundaries where members knew they were part of a group, members agreed upon management decisions, effective monitoring, the presence of sanctions where self-serving behaviour could be detected and punished, a fast and fair conflict resolution, a lack of internal conflict and autonomy. Ostrom's work emphasizes respect for Indigenous knowledge and the customary land of Indigenous peoples where their right to participate in democratic and decentralized decision making processes is recognized.¹³⁸

The Maya communities have many of the conditions for success that Ostrom describes. They have used self-organization to manage the forests for thousands of years. They depend on the forest for their subsistence and their livelihood. They are more likely to understand the benefits of restrictions on resource use and how these work to ensure sustainable harvest. They also have Indigenous governance system in place that gives them the autonomy to decide how resource systems will operate. These systems afford them the opportunity to reflect on how their actions could affect the CPRs. Maya people

¹³⁶ Ostrom, E. "Revisiting the Commons: Local Lessons, Global Challenges." *Science*, 284.5412, Sept. 1999, 278.

¹³⁷ *Ibid* at 278.

¹³⁸ *Supra* note 136 at 278.

are not preoccupied with market demand, individualized profits or short-term gain.¹³⁹ Instead, they are ultimately concerned with sustainable forest management as their livelihood and well-being are so closely tied to the forest they call home. In contrast, external groups in Belize such as the government and logging corporations exert their political, economic and social power in order to exploit the forests. There are examples of Maya communities that have proven their ability to manage CPRs effectively. In one Maya village, the Alcalde decided that rosewood concessions should be controlled collectively through dividing the trees equally amongst the farmers in the community. The trees were cut far from the village center so as to not interfere with hunting practices. The community also negotiated their preferred price with suppliers to ensure a fair profit.¹⁴⁰

The CCJ judgment should be seen as an opportunity to create more investment opportunities in Indigenous forest management institutions, which rely on local expertise and authority. This will provide the Maya people with self-determination and agency over their lands and livelihood. When I asked the Maya activist about what they would like the future of forest management in Belize to look like, they responded:

Someday there will be Maya foresters who do not work for government but work with their communities. They are governed through the community system. They are respected, they are recognized. They are included as part of the government's effort to protect our forest and to protect our biodiversity. The communities have done an amazing job on their own. I can only imagine the possibilities if we were able to get over the hurdles of protection and of recognition.¹⁴¹

7 – The Enforceability of International and Domestic Law

While in Belize, I noticed that there was a stark divide between what international human rights law promised and what was actually being delivered on the ground due largely to issues with implementation. We see a similar situation in Canada where a rights revolution was promised to Indigenous people but was not delivered. Author and academic, Michael Ignatieff has said that, “Nobody would claim that having these rights

¹³⁹ *Supra* note 132 at 9.

¹⁴⁰ *Supra* note 3 at 56.

¹⁴¹ Mis, Pablo. Personal Interview. 19 Dec 2018.

has made matters worse. But nobody is confident that it has made things better... Cynics might almost suspect that elites talk not in order to make things happen, but so they can sustain the illusion that things are changing for the better.”¹⁴² Even with treaty rights, the right to self-government, and the calls to action by the Truth and Reconciliation Committee of Canada, Indigenous communities are still living in “appalling social conditions on reserves.”¹⁴³ Donald Maracle, the chief of the Mohawks of the Bay of Quinte, has said that the residents live in “Third World conditions,” and have developed skin rashes and gastrointestinal illnesses from showering or drinking the water.¹⁴⁴ Law Professors, Daniel and David Barnhizer argue that laws are a necessary component of enforcing rights, “...law, legal institutions, and legal processes crystallize and solidify cultural norms and ideas into a more permanent rigid form.”¹⁴⁵ However, due to a lack of political will, human rights policies are not enforced or implemented in Belize. As Professor Thomas Stoddard states, “social change and legal change do not always walk hand-in-hand. One does not always stimulate the other. Attempts to reform the law may succeed as a formal matter but have only modest effects on the larger cultural context into which they fit.”¹⁴⁶

The 2015, CCJ judgment held that the Maya people have constitutional rights to the land that they have consistently used and occupied. However, the government has knowingly violated the court order on numerous occasions. Accordingly, the focus of the MLA has shifted from advocacy to implementation. In order to shed a light on why the land rights judgment remains to be enforced or implemented, this section will analyze the effectiveness of international and domestic law in assisting the Maya people with their land rights struggle. It will also document the strengths of the land rights movement, showcasing how the MLA and Maya communities can continue to use court-based strategies alongside other tactics to protect their constitutionally guaranteed land rights.

¹⁴² Ignatieff, Michael. *The Rights Revolution*. Toronto: Anansi Press, 2000, 15.

¹⁴³ *Ibid* at 16.

¹⁴⁴ Coletta, Amanda. “‘Third World Conditions’: Many of Canada’s Indigenous People Can’t Drink the Water at Home.” *The Washington Post*, 15 Oct. 2017.

¹⁴⁵ Barnhizer, Daniel and David. *Hypocrisy and Myth – The Hidden Order of the Rule of Law*. Massachusetts: Edward Elgar Publishing Ltd, 2008, 11.

¹⁴⁶ Stoddard, Thomas B, “Bleeding Heart: Reflections on Using the Law to Make Social Change” 72 *New York University Law Review* 72, (1997) 972.

7.1 - United Declaration for the Rights of Indigenous Peoples (UNDRIP)

During my time working with the MLA, I saw how strongly UNDRIP resonated with the Maya people. While drafting letters to the government of Belize or crafting legal arguments, the MLA always took the opportunity to remind them that Belize was a signatory to several international obligations, including UNDRIP. Although the opportunity to cite this declaration was always taken advantage of, behind the scenes, the organization felt as though the Indigenous peoples in Belize were the only ones who truly recognized the importance of this milestone in relation to the protection and promotion of Indigenous rights. The government of Belize spoke at length about believing in the spirit of reconciliation, however, the injustices against Indigenous people in Belize continue to be commonplace. Despite this, I saw how UNDRIP played a fundamental role in the Maya people's ability to assert their land rights. The declaration also allowed them to mobilize and strengthen their movement, and gave them common language around which they could mobilize a movement.

UNDRIP is an international instrument that was adopted by the United Nations in 2007. The Declaration is the product of almost 25 years of deliberation by United Nations member states and Indigenous groups.¹⁴⁷ UNDRIP enshrined the rights that “constitute the minimum standards for the survival, dignity and well-being of the Indigenous peoples of the world.”¹⁴⁸ UNDRIP protects the collective rights that may not be addressed in other human rights legislation that emphasizes individual rights. Significantly, Article 3 UNDRIP recognizes Indigenous peoples' right to self-determination, which includes the right “to freely determine their political status and freely pursue their economic, social and cultural development.” Article 4 affirms Indigenous peoples' right “to autonomy or self-government in matters relating to their internal and local affairs.” Article 5 protects their right “to maintain and strengthen their distinct political, legal, economic, social and cultural institutions.” Article 26 states that “Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired,” giving Indigenous peoples legal recognition to their territories. The Declaration does not override the rights of Indigenous peoples contained

¹⁴⁷ “UN Declaration on the Rights of Indigenous Peoples.” *Indigenousfoundations*, indigenousfoundations.arts.ubc.ca/un_declaration_on_the_rights_of_indigenous_peoples/.

¹⁴⁸ *Supra* note 115 at 3.

in their treaties and agreements with individual states, and it commands these states to observe and enforce the agreements.

UNDRIP embraces collective rights, recognizes the interrelationship between rights to heritage, land, and development and requires free, prior and informed consent before developments take place.¹⁴⁹ Indigenous communities use it as a tool to implement their rights as well as a minimum standard for engagement. It is considered a victory for Indigenous people as international law has not traditionally supported their efforts. As James Anaya has said,

“International law, although once an instrument of colonialism, has developed and continues to develop, however imperfectly to support Indigenous Peoples demands.”¹⁵⁰

Even after the issuance of the CCJ judgment, Maya land rights are not formally recognized by the government and the security of Maya land continues to be under threat despite numerous intense negotiations. The government of Belize may have chosen to ratify UNDRIP as a political statement rather than a meaningful means of protection. In this way, the ratification was not a true commitment to implement and enforce Maya rights. This could be why the social conditions in Belize remain the same and “right talks may even be a substitute for reform.”¹⁵¹ Although the government of Belize has gone out of its way to delegitimize the struggle of the Maya people and deny that their rights have been violated, they cannot deny their obligation to respect the rights of Indigenous people as they voted in favour of UNDRIP. The choice to ratify UNDRIP, alongside the CCJ judgment meant that the Maya people were given the opportunity to shift the power structures in Belize. These events lent legitimacy to the Maya people’s struggle for land rights and left the door open for social movements to take place. The Maya people were provided with leverage needed to place pressure on the government to enforce their promise to protect Maya land rights. The Maya activist I interviewed spoke to the importance of international law for the Maya land rights movement,

¹⁴⁹ Engle, K. “On Fragile Architecture: The UN Declaration on the Rights of Indigenous Peoples in the Context of Human Rights.” *European Journal of International Law*, 22.1, Jan. 2011, 141.

¹⁵⁰ Allen, Stephen & Xanthaki, Alexandra *Reflections on the UN Declaration on the Rights of Indigenous Peoples*. London: Hart Publishing, 2011, 182.

¹⁵¹ *Supra* note 143 at 16.

In the International setting, Belize acknowledges their obligations. No government likes to be embarrassed or be called out. While they don't talk to us here in the country, they talk to us in these international settings. International law is an instrument to add pressure on the government, being reminded consistently of its obligations.¹⁵²

The MLA employed strategic litigation as a tactic and UNDRIP formed a central part of their legal argument. The court placed an obligation on the government to ensure that the customary rights of the Maya people were protected under the Constitution of Belize. Since the judgment, there has been a drastic reduction of the infringement of oil and logging concessions on Maya lands as a result of the legal affirmation of UNDRIP. When I asked the Maya activist about how they have used UNDRIP to advance Maya land rights in Belize, they responded,

UNDRIP is an instrument to advance Indigenous rights. The declaration is a consensus among global leaders that established a common understanding about the minimum standards that are expected, that should be followed, that should guide engagement with Indigenous people. It has to do with protection of culture, economic development, decision-making. It is a declaration so it is not enforceable on governments but it establishes a global consensus about the minimum standards and is the guiding force about how states should engage in with Indigenous people. This is the basis for the MLA to add pressure on the government because they endorsed UNDRIP. When the government acts contrary to the declaration on the ground, the MLA reminds the government that they are breaking their obligations.¹⁵³

Although the UNDRIP ultimately led to the development of Belizean law and contributed greatly to the Maya land rights victory, the government of Belize remains out of compliance with the CCJ judgment and the principles of UNDRIP.¹⁵⁴ The Maya land rights judgment demonstrates that a court decision does not always guarantee that implementation will follow. UNDRIP is not a treaty and is therefore not binding on the Belizean government. The Maya people's rights could have been strengthened if the principles of UNDRIP were incorporated into national legislation.¹⁵⁵ The MLA is

¹⁵² Mis, Pablo. Personal Interview. 19 Dec 2018.

¹⁵³ *Ibid.*

¹⁵⁴ Douglass Cassel, "Does International Human Rights Law Make a Difference?" *Chicago Journal of Law*, (2001) 121.

¹⁵⁵ *Ibid* at 148.

currently advocating for customary land management practices to be implemented into national policy.¹⁵⁶

In Belize, we have seen that the government tends to prioritize the interests of industry over the Maya people and is also reluctant to respect their right to communal land or self-governance. There is an apparent tension between promoting human rights and balancing economic development, as human rights remain problematically tied to capitalism. Despite UNDRIP's limitations, the declaration is a monument to the survival and struggle of Indigenous Peoples that represents "a beacon of hope for the realization of that future beyond the daunting challenges that persist."¹⁵⁷

7.2 - Enforceability of Domestic Judgments

Winning a case in court does not signify the end of struggle. Despite the land rights judgment victory, the government currently lacks the accountability and political will needed to respect and affirm Maya land rights.¹⁵⁸ This is partly a result of the consent orders' vague implementation measures. Although the court emphasized the need to create a fund in the interest of reconciliation and set the amount that the government needed to contribute, they left it up to the government to determine how the funds should be used and which mechanism should be developed. While creating the resolution mechanism, the needs of the Maya people were not addressed by the government. For example, the Maya people asked the government for a translation of the CCJ judgment into the official Maya languages but this request was not realized. The court also ordered the government to work alongside the Maya communities to demarcate and determine the village boundaries in order to avoid land disputes and allow Maya people to assert their communal property rights and improve the monitoring of resources. The court emphasized that the demarcation process should be community driven but that the government has a role in verifying the outcomes and results. By December 2017, the government claimed that the resolution process had been completed and the funds

¹⁵⁶ *Supra* note 14 at 12.

¹⁵⁷ Hohmann, Jessie & Weller, Marc. *The UN Declaration the Rights of Indigenous Peoples: a Commentary*. New York: Oxford University Press, 2018, 62.

¹⁵⁸ Hurwitz, Deena. "Engaging Law School Students through Human Rights Clinics: a Perspective from the United States." *Maryland Journal of International Law*, 26, 2011, 112.

allocated by the court had been exhausted. The MLA maintained that they had not been meaningfully consulted in the process and the delineation of community boundaries had not been resolved.¹⁵⁹ It became clear that the enforceability of the judgment could be improved with stronger implementation mechanisms and independent bodies reporting on the progress of the judgment.

In March 2019, there was a CCJ hearing where the court received an update on the progress of the 2015 consent order.¹⁶⁰ At this hearing, the judge mentioned that both parties needed to agree on the steps that should be taken to move forward with implementing the judgment. The parties told the court that a dispute resolution mechanism was created with law Professor Dinah Shelton leading the process. Although the government of Belize selected Shelton, she has received the support of the MLA as well. The process works as follows: when there are incursions or violations of the CCJ judgment such as a logging concession issued on Maya lands, these concerns can be brought before Shelton. As an independent and objective authority, Shelton will review the complaint and will then issue her recommendations, which will guide the future actions of both parties. It is also possible to continue the important discussion of determining the boundaries of the Maya people's land through this dispute resolution mechanism. The MLA considers this to be an important step in the implementation and enforcement of the land rights judgment. Although the court played an important role in correcting a historical wrong and affirming Maya land rights, it is not practical or efficient for the MLA to continue to take the government of Belize to court. The Maya people should not be overburdened by legal proceedings in order to continue to correct the historical wrongs that have been afflicting them for some time. This dispute resolution mechanism is more cost-effective and timely, which will allow the MLA to secure financing and mobilize resources for other important initiatives.

¹⁵⁹ Adele Ramos, "Maya say GOB in flagrant violation of Court Order" *Amandala* (28 October 17), online: <<http://amandala.com.bz/news/maya-gob-flagrant-violation-ccj-order/>>.

¹⁶⁰ Krem Television, "CCJ Holds Compliance Report Hearing Regarding Mayan Land Rights" (25 March 2019).

7.3 - Diversity of Viewpoints in Maya Communities

The government is propagating misinformation in an effort to disempower the Maya land rights movement. The misinformation has contributed to a divide in Maya communities, which is turning community members against each other. The government has argued that the more “educated and enlightened” sections of the Maya communities prefer individual property rights.¹⁶¹ The MLA contends that within communal land ownership there are individual derivative rights to property. It is important to recognize that not everyone in a community will share the same views. Minority groups are not homogenous and it is incorrect to assume that all Indigenous people should be serviced or approached in the same manner. Some Maya people stand strongly opposed to land development due to the importance that they place on managing the forest sustainably. However, other Maya people support land development so long as it is properly negotiated and it brings benefits to the community. When I questioned the Maya activist about the tensions that arise through the diversity of viewpoints within communities, they took the opportunity to reiterate the important role that the Indigenous governance system plays in Maya communities,

Maya communities are not stagnant, they are not stuck in time. They are trying to negotiate their existence in a rapid, globalizing setting. There will always be tensions and differences. If we think the tensions are to be solved by finding solutions in the textbooks, courtrooms, or in Geneva, then we are wrong and we are missing the entire point. Maya communities are living organisms and the body that holds all of this together goes back to the system of Indigenous governance that is there. If your body is failing you, the different organs are failing you, without taking care of that, you can’t expect to get healthy or stronger.

For us, the system of government is the most important. Everything we have done in our work has been to revitalize the Alcalde system. It is the singular most important mechanism that allows the Maya communities to deliberate over issues that they may not agree on, new concepts that are encroaching on them and that will allow them to build consensus on the way forward. They might fail, we won’t get everything correct but we want to know that when we fail, we fail together. We pick ourselves back up and we start all over. It’s all about ensuring that the community is at the center of making the decisions.¹⁶²

¹⁶¹ *Supra* note 149.

¹⁶² Mis, Pablo. Personal Interview. 19 Dec 2018.

It is true that the Maya customary land system is not perfect. There are still very apparent inequalities between men and women in the communities as women are discouraged from taking on leadership roles. However, although women do not formally participate in community governance or village meetings, they have influence on public affairs through their husbands. It is also true that the younger Maya generations are choosing to leave their communities. As they are seeking occupations outside the conventional role as farmers, traditional knowledge about land management is not being transferred and they are becoming disengaged from the land rights movement. Despite these challenges, the CCJ judgment remains important because it allows the Maya community members to decide how they would like their land to be registered and used as a collective majority. The Indigenous governance system has the potential to take the power away from foreign investors and place it back in the hands of the Maya people, allowing them to define their own development. When the Maya people are able to present a unified front, the government will not be able to justify their infringements by arguing that the Maya organizations do not represent the communities.

7.4 - Multidimensional Advocacy

I have come to appreciate that law and justice are not the same. Law responds to social change, it does not lead it. It is reactive rather than proactive and people need to challenge laws before they are changed. Pressure needs to be placed on lawmakers because they are often changing laws that do not affect them, so there is no urgency. In law school, I felt as though the curriculum placed an emphasis on the utility of the court system to solve a variety of issues and other avenues for problem solving (which in some cases would be more effective) are not readily discussed. Human rights scholar, Abdullahi An Na'im argues that countries may actually 'do more' for the implementation of human rights 'with less' reliance on legal protection of these rights because in many cases, these rights are not enforceable.¹⁶³

¹⁶³ An-Na'im, Abdullahi. "The Legal Protection of Human Rights in Africa: How to Do More With Less" in Austin Sarat and Thomas Kearns, eds. *Human Rights, Concepts, Contests, Contingencies*. University of Michigan Press, 2002.

Considering the Belizean government's resistance to accept the lower court judgments, it was not surprising that they also resisted the CCJ judgment, making the enforcement and implementation of the judgment difficult. Having knowledge that the government would resist the judgment, some may argue that the litigation-based strategy diverted scarce resources away from more effective strategies, such as direct action tactics. It may appear that MLA's court victories provided the Maya villages with a "hollow hope."¹⁶⁴ However, court proceedings have been proven to play a very important role in the Maya people's struggle. As the land rights case was going through the courts over the years, the momentum of their social justice movement increased. The court hearings garnered international and local attention, providing the MLA with an opportunity to highlight the grave injustices that the Maya people have experienced. Their legal efforts raised consciousness, mobilized constituents and increased fundraising.¹⁶⁵ The court also continues to supervise the CCJ judgment and will hold meetings to hear updates on the government's progress relating to the case, which will hopefully encourage compliance in the future.

While human rights advocates should keep trying to achieve the maximum possible degree of legal protection with the capacity and resources available to them, they should also seek to implement human rights through other strategies. The litigation tactics are only a component of the MLA's multidimensional advocacy as they rely on a variety of strategies deployed in multiple institutional domains.¹⁶⁶ As the Maya people cannot depend on international or domestic law alone to assist in enforcing their rights, they must rely on social activism. The promise of activism is that the government will be forced to implement Maya people's rights if they wish to sustain their right to govern. As law Professor Owen Fiss states, it is the job of the government "...to explicate and give force to the values embodied in authoritative texts such as the Constitution."¹⁶⁷ There is a cyclical relationship between grassroots activism and legitimization of land rights. It is the job of the activists to bring attention to the shortfall of governments, drawing attention to the gap between what is promised and what is delivered. This is the reason

¹⁶⁴ Neumayer, Eric "Do International Human Rights Treaties Improve Respect for Human Rights" *Journal of Conflict Resolution* 49:6 (2005) 946.

¹⁶⁵ *Supra* note 164 at 981.

¹⁶⁶ *Supra* note 164 at 945.

¹⁶⁷ Fiss, Owen. "Against Settlement." *Yale Law School* 93.1073 (1984) 1085.

why the MLA continues to advocate for the enforcement of the CCJ land rights judgment in legal and political arenas. Support from the state alongside social movements will lead to the best outcomes for social justice.

The MLA also works alongside international non-governmental organizations that assist in investigations and publishing reports to hold the government accountable and keep Maya land rights on the political agenda. It has been shown that improvement in human rights is more likely when international non-governmental organizations participate in the movement.¹⁶⁸ When the locals groups align with transnational networks, pressure is exerted on the government “from below” as well as “from above,” increasing the likelihood of meaningful change.¹⁶⁹ Pressure needs to be consistently placed on governments if we hope to continue to see human rights complaints remedied.

It is equally as important for the MLA to continue educating Maya community members about their rights and encourage citizen participation. The MLA spearheaded the creation of the Maya consultation framework, which sets out the minimum standard for engagement with Maya people. The framework will ensure that the Maya people are adequately consulted on all resource management plans and development projects that implicate their land. The framework draws upon the Maya customary process as well as the principles outlined in UNDRIP.¹⁷⁰ The MLA also organizes visioning exercises in each community, which will articulate a common dream for Maya land, families and communities, with a focus on economic development.¹⁷¹ These exercises allow the village members to envision how they are going to use the CCJ judgment to develop and manage the resources within their communities. During the first sessions, community members were asked to write down their “needs” for the community, alongside their “wants” for the community. This exercise resulted in a clear vision for development that can be promoted going forward. The MLA also organizes discussion sessions in communities where they discuss land rights and other issues affecting the Maya people. This allows for engagement of Maya villagers and gives them a space to express their concerns. The community radio show, Ak Kutank, promotes Maya culture and provides

¹⁶⁸ *Supra* note 164 at 935.

¹⁶⁹ *Supra* note 164 at 935.

¹⁷⁰ *Supra* note 132 at 10.

¹⁷¹ *Supra* note 132 at 9.

information to the Maya villages.¹⁷² This platform provides the MLA with a way to keep the Maya people updated on various issues that are affecting their communities

8 – Conclusion

After a decades long struggle, the Maya people have just recently had their land rights officially recognized by the highest court in Belize. Although these rights are guaranteed in political and legal terms, the promises of the CCJ judgment remain unfulfilled. While the judgments have helped to curb deforestation, incursions by government and industry continue to take place on Maya lands. Throughout this paper, the relationship between the Maya land rights struggle and forest management has been explored. It was argued that the power dynamics in Belize favour those of the government and industry and therefore, forest management plans in Belize do not currently prioritize or incorporate local knowledge. As a result, Maya communities lack agency over their lands and livelihood. The discussion of the connection between Indigenous governance systems and resource management demonstrated that the legitimacy of local government systems must be recognized and supported before equitable forest management can be observed. The recognition of the right to self-determination is an important competent of sustainable resource management and has been described as a “real and moral solution to the ecological crisis” as ecosystems have been proven to best protected by those who live there.¹⁷³

This paper also discussed the strength of the tactics employed by the MLA and demonstrated that, despite a government’s unwillingness to support a social movement, it is still possible to achieve gains in social justice. The lack of political resolve in Belize highlights the need for the MLA to continue work with international organizations and local communities as well as the need to use court-based strategies to promote their vision of justice. It is clear that the courts play an important role in protecting the rights and customary laws of the Maya people. The court-based tactics paired alongside efforts to strengthen local governance and resource management in Maya communities have resulted in an effective strategy to respect and promote Maya land rights. The MLA has

¹⁷² *Supra* note 132 at 11.

¹⁷³ *Supra* note 37 at 7.

played a fundamental role in the Maya land rights struggle providing mobilization, outreach, advocacy and legal support. The MLA's work has begun to shift the balance of power towards the Maya people as they continue to advocate for their land rights to be recognized and resist the industrial encroachment on their ancestral lands. Their success can be attributed to dedication, perseverance and an effective strategic framework.

The main motivation of the Maya activists in Belize is to ensure that their children and the future generations of Maya people will continue to thrive, that Maya people will continue to be given access to the resources that the forests provide as well as agency over these resources. Despite the apparent barriers to justice and procedural setbacks, the MLA chooses to stay optimistic, utilizing a diverse array of strategies for the mobilization of their land rights movement. They are aware that meaningful, lasting change will not be seen immediately and although the process is lengthy, it is important to keep the long-term social justice goals in mind. It is also important to recognize the minor victories that play an important role in the long fight for justice. The MLA continues to place pressure on the government to recognize the Maya people's constitutionally guaranteed rights and abide by the CCJ judgment. They will be able to utilize the CCJ judgment to hold the government accountable, thereby preventing future infringements. The courts and international organizations will hopefully continue to hold the government accountable for their actions as well.

While I was only in Toledo for a moment in time in the long history of struggle of the Maya people, I was inspired by the Maya people's commitment to justice and equitable forest management. I am confident that the MLA's dedication will allow for more positive developments related to the Maya people's livelihood and legacy in the Maya forests. As the struggle for justice and equality continues, it is apparent that the political environment is shifting and the legal tide is turning. Even though it is questionable whether the government will fully cooperate with the CCJ judgment in the near future, the Maya people should be able to experience continued success in the courts as law and justice are on their side. The government will continue to be called before the courts and they will need to provide an explanation for their failure to act on the CCJ judgment. Their past attempts to delegitimize Maya land rights have not been successful and there are only so many delay tactics they can employ before they will need to do the

right thing and abide by the court's orders. Until then, the Maya people remain steadfast in their commitment to protect their lands and culture. The MLA will continue to resist oppression and marginalization and will never give up in their fight for the resurgence, revitalization and self-defined future for the Maya forests and for Maya people of Southern Belize.

Appendix A: Sample Questions for Interview

Interview with Pablo Mis, Spokesperson for the Maya Leaders Alliance

1. What are some of the institutional or political factors driving deforestation in Belize?
2. What role have the Maya people of Belize played in safeguarding the forests in Belize? What role will they continue to play?
3. What do the Maya communities think of co-management (agreements between government agencies and representatives and Maya people to jointly make land use and resource management decisions)? Is there a strong division in opinions between different Maya communities?
4. In his judgment at the Supreme Court of Belize, Justice Conteh held that the government of Belize is obligated to protect Maya land rights under international law as Belize voted in favour of the United Nations Declaration on the Rights of Indigenous People (UNDRIP). What are the barriers to effective enforcement of this aspect of the land rights judgment?
5. Outside of the law, what other enforcement mechanisms do you think have the potential to protect the Maya people's rights and promote sustainable forest management? What other tactics are the Maya people exploring to protect their rights and their lands?
6. What would you like to see change when it comes to forest management in Belize?

Appendix B: Sample Informed Consent Form

Date: November 18, 2018

Name of Participant: _____

Study Name: Deforestation Conflicts from a Criminological Perspective

Researchers: Helen Willoughby

Purpose of the Research:

My research will analyze environmental harms through a criminological perspective, uncovering the social, economic and political conditions, which reinforce them. This framework will allow me to explore the reasons why environmental crime/harm occurs as well as the meaning of these crimes/harms. More specifically, I will be applying a criminological framework to deforestation conflicts and sustainable research management. With my research I plan to explore why deforestation conflicts are occurring, which I hope will assist in both explaining and predicting these conflicts. The overriding goal of my research is to advance the understanding of how to prevent, deter, slow down or stop illegal logging.

A case study of logging taking place in Maya villages throughout Southern Belize will be used to explore the issues surrounding deforestation conflicts. Industrial activities such as logging and oil extraction are threatening the Maya people's livelihood, land rights and culture. I will be examining the consequences and causes of harm done to the natural environment in local Maya communities. I will also analyze various responses to environmental harms and the extent to which these responses have the potential to prevent these harms in the future. I would also like to explore the transformative potential of the law to act as a deterrent to curb deforestation and effect social change. This analysis will include an examination of the role of international law (particularly UNDRIP) in safeguarding the rights of the Maya people as well as their traditional way of life. My MRP will analyze the barriers to enforcement of international human rights law and domestic law, focusing on the issues associated with safeguarding traditional Indigenous governance systems and promoting sustainable resource management on Maya lands.

What You Will Be Asked to Do in the Research:

Participants will participate in an in-depth, structured interview that I predict will be around an hour in length. The questions will pertain to the role of Indigenous communities in sustainable resource management in Belize. The questions will be provided to the participants ahead of time. There may be follow up questions based on the participant's responses. The interview will take place over Skype. Please note that images from the Skype interview will not be included in my report.

Risks and Discomforts:

The main risk I anticipate is feelings of discomfort or risk, given the contentious nature of the issues that I am studying. The work that is done by the Maya Leaders Alliance may invoke feelings of frustration and resistance in some members of the Belize population. If at any point during your participation in my research study, you experience discomfort or feel that a response could put your personal safety at risk, you maintain the right to skip questions or end the study altogether. You may ask for comments to be struck from the report at any time. To help mitigate these concerns, I will allow all participants to review my report before submission and will change the nature of the report based on suggestions of the participants.

Benefits of the Research and Benefits to You:

The content derived from the interviews will be placed in section IV of the paper (case study of deforestation in Southern Belize). I would like to conduct an interview with the participant listed above because I believe that it is important to include the Maya perspective in my research. The interview will allow me to gain a complete understanding of the issues surrounding resource management in Belize. This is especially true as the academic literature documenting the deforestation issues in Belize is limited. The insight that I gain from members of the Maya community in Southern Belize, will further support the academic literature on the topic.

Voluntary Participation:

Your participation in the study is completely voluntary and you may choose to stop participating at any time. Your decision not to volunteer will not influence the nature of the ongoing relationship you may have with the researchers or study staff or the nature of your relationship with York University either now, or in the future.

Withdrawal from the Study:

You can stop participating in the study at any time, for any reason, if you so decide. Your decision to stop participating, or to refuse to answer particular questions, will not affect your relationship with the researchers, York University, or any other group associated with this project. In the event you withdraw from the study, all associated data collected will be immediately destroyed wherever possible.

Confidentiality:

Given the specific nature of my research, it is not feasible for the participants to remain anonymous. If you consent to participate in my research, your interview will be associated with identifying information (e.g. name and organization).

The data will be collected through notes taken on my personal laptop computer. The data from the interview will be stored for a minimum of two years on my personal computer.

If requested, the data from the interview can be destroyed after this time. Confidentiality will be provided to the fullest extent possible by law.

Please check the box below, providing your explicit consent to waive anonymity.

☐

Please note that the interview will be recorded so that I can refer back to the responses while writing my research report. Please check the box below, providing your explicit consent to be recorded.

☐

Questions About the Research? If you have questions about the research in general or about your role in the study, please feel free to contact my Supervisor, Dr. Justin Podur, by e-mail (jpodur@yorku.ca). This research has been reviewed and approved by the FES Research Committee, on behalf of York University, and conforms to the standards of the Canadian Tri-Council Research Ethics guidelines. If you have any questions about this process, or about your rights as a participant in the study, please contact the Sr. Manager & Policy Advisor for the Office of Research Ethics, 5th Floor, Research Tower, York University (telephone 416-736-5914 or e-mail ore@yorku.ca).

Legal Rights and Signatures:

I, *(fill your in name here)*, consent to participate in the interviews conducted by *Helen Willoughby*. I have understood the nature of this project and wish to participate. I am not waiving any of my legal rights by signing this form. My signature below indicates my consent.

Signature _____
Participant

Date _____

Signature _____
Principal Investigator

Date _____

Use this section if imagery (photographs or video) will be taken of participants and used in teaching or dissemination of research.

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